

No. 15280

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United States  
Court of Appeals  
for the Ninth Circuit

*See vol. 3015-*  
MILES H. ROBINSON,

Appellant,

vs.

R. W. STEVENS, et al.,

Appellees.

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Transcript of Record  
In Four Volumes

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Volume I  
(Pages 1 to 444)

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PAUL P. O'BRIEN

Appeal from the United States District Court for the  
Eastern District of Washington,  
Southern Division.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

MILES H. ROBINSON,

1306 Dulaney Valley Rd.,

Baltimore 4, Md.,

For Appellant, in Propria Persona.

JUDD D. KIMBALL,

707 Baker Bldg.,

Walla Walla, Washington, and

JOHN C. TUTTLE,

Denny Bldg.,

Walla Walla, Washington,

Attorneys for Stevens, et al.

WILLIAM KEYLOR SMITH,

401 Baker Building,

Walla Walla, Washington,

Attorney for St. Mary's Hospital.

ROSLING WILLIAMS,

LANZA AND KASTNER,

918 Vance Building,

Seattle 1, Washington,

Attorneys for Washington State Medical  
Association.

HERBERT H. FREISE,

200 Jones Building,

Walla Walla, Washington,

Attorney for Walla Walla General Hos-  
pital.





In the District Court of the United States for the  
Eastern District of Washington, Southern Di-  
vision

No. 915

MILES H. ROBINSON,

Plaintiff,

vs.

R. W. STEVENS, A. A. YENGLING, J. G.  
LYMAN, S. R. PAGE, M. W. TOMPKINS,  
R. S. KEYES, F. L. RALSTON, A. E.  
LANGE, N. E. BEAVER, L. O. CARLSON,  
W. A. PRATT, C. E. FULLERTON, T. R.  
BROOKS, NOEL EDWARDS, WALLA  
WALLA VALLEY MEDICAL SOCIETY, a  
Corporation; WASHINGTON STATE MEDI-  
CAL ASSOCIATION, a Corporation; ST.  
MARY'S HOSPITAL, a Corporation;  
WALLA WALLA GENERAL HOSPITAL,  
a Corporation; WALLA WALLA VALLEY  
MEDICAL SERVICE CORPORATION, a  
Corporation, and AMERICAN MEDICAL  
ASSOCIATION, a Corporation,

Defendants.

## COMPLAINT

Plaintiff complains and alleges as follows:

### I.

That plaintiff, Miles H. Robinson, is a resident  
and citizen of the State of Maryland and is a duly

qualified and licensed practitioner of medicine in such state, and was, and now is, a physician regularly and duly licensed under the laws of the State of Washington to practice medicine therein; that the defendants, and each of them, are citizens and residents of the State of Washington, except the American Medical Association, a corporation, which is a citizen and resident of the State of Illinois, but which engages in its said business within the State of Washington; that the matter in controversy herein exceeds, exclusive of interest and costs, the sum of \$3,000.00.

## II.

That plaintiff at all times mentioned herein was regularly [1\*] and duly licensed as a physician under the laws of the State of Washington and thereby entitled to practice his profession in said state and was so duly licensed and practicing his profession on September 13th, 1948, to June 15th, 1953, in the City and County of Walla Walla, Washington.

## III.

That defendants, R. W. Stevens, A. A. Yengling and J. C. Lyman, at all times herein mentioned were, and now are, physicians licensed under the laws of the State of Washington and members of the defendant Walla Walla Valley Medical Society; and from April 25th, 1950, to December 14th, 1950, were members of a Grievance Committee of the said Society, the membership of which Griev-

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.

ance Committee was kept secret from all of the other doctors, members of the said society, of which said secret committee, the defendant R. W. Stevens was chairman.

#### IV.

That defendants, S. R. Page, M. W. Tompkins, R. S. Keyes, F. L. Ralston and A. E. Lange, at all times herein mentioned were, and now are, physicians duly licensed under the laws of the State of Washington and members of the defendant, Walla Walla Valley Medical Society, and at all times herein mentioned prior to December 14th, 1950, were the duly elected officers and trustees of the said Society.

#### V.

That defendants, M. W. Tompkins, N. E. Beaver, L. O. Carlson, S. R. Page and W. A. Pratt, at all times herein mentioned were, and now are, physicians duly licensed under the laws of the State of Washington and members of the defendant, Walla Walla Valley Medical Society; and, from December 14th, 1950, to and including May 22nd, 1951, were the duly elected officers and trustees of the said Walla Walla Valley Medical Society. [2]

#### VI.

That defendant, C. E. Fullerton, at all times herein mentioned was the executive secretary of the defendant, Walla Walla Valley Medical Society, the manager of the Walla Walla Valley Medical Service Corporation, and, from April 25th, 1950, to De-

cember 14th, 1950, was the secretary of the said secret Grievance Committee of the said Society.

## VII.

That defendant, T. R. Brooks, and defendant, Noel Edwards' infant daughter, were, on and prior to October 10th, 1950, patients of the plaintiff.

## VIII.

That defendant, Washington State Medical Association, hereinafter referred to as the State Association, was at all times herein mentioned, and now is, a corporation organized and existing under the laws of the State of Washington, and a constituent association of the defendant, American Medical Association, and said State Medical Association caused a charter to be issued to the said Walla Walla Valley Medical Society making the said Society a component Society within the State Association, which charter at all times herein mentioned was, and now is, in full force and effect, and that said State Association at all times was, and now is, a parent corporation superior to said Society and did and does exercise a dominant position of control over the affairs of said Society.

## IX.

That defendant, American Medical Association, hereinafter referred to as the AMA, was at all times herein mentioned, and now is, a corporation doing business in the State of Washington, and said Association caused a charter to be issued to the said

Washington State Medical Association making said State Association a component Association within the American Medical Association, [3] which charter at all times herein mentioned was, and now is, in full force and effect, and that said American Medical Association at all times was, and now is, a parent corporation superior to said State Association and did and does exercise a dominant position of control over the affairs of said State Association and other subordinate medical groups and over the affairs of individual physicians generally.

#### X.

That defendant, St. Mary's Hospital, at all times herein mentioned was, and now is, a nonprofit, tax-exempt corporation organized and existing under the laws of the State of Washington.

#### XI.

That defendant, Walla Walla General Hospital, at all times herein mentioned was, and now is, a nonprofit, tax-exempt corporation, organized and existing under the laws of the State of Washington.

#### XII.

That defendant, Walla Walla Valley Medical Society, which will be referred to hereinafter as the Society, was incorporated May 2nd, 1950, and now is a corporation organized and existing under the laws of the state of Washington, and is a component part of the said State Association.



## XIII.

That defendant, Walla Walla Valley Medical Service Corporation, also known as and hereinafter referred to as the Medical Bureau, was at all times herein mentioned, and now is, a corporation existing under the laws of the State of Washington and was organized and is owned by certain doctor members of defendant Society for the purpose of furnishing prepaid medical and surgical services to eligible persons.

## XIV.

That at all times herein mentioned, and pursuant to agreements between the hospitals of the City of Walla Walla, [4] Washington, and the doctors on the medical staffs of such hospitals, which type of agreements are generally standard throughout this country, membership in the defendant Society was and is a prerequisite to the right to practice the medical profession in said hospitals and to enter and treat patients in the said hospitals. That the right to practice medicine in the local hospitals of the City of Walla Walla, Washington, and to enter and treat patients in said hospitals, was at all times herein mentioned, and now is, necessary to the conduct of successful and profitable practice in the City and County of Walla Walla, Washington.

## XV.

That because of the necessity for hospital privileges described in Paragraph XIV above, and professional standing to be derived therefrom, and also as a prerequisite for participation in all local

prepaid medical plans, plaintiff became a member of the defendant Society, which carried with it membership in the defendant State Association and defendant American Medical Association, plaintiff's membership in said Society commencing on January 25th, 1949, and continuing in good standing until his expulsion on May 22nd, 1951, as is hereafter more particularly shown.

#### XVI.

That plaintiff, on or about February 1st, 1950, acquired a large medical practice formerly conducted by one Dr. F. M. Campbell, in the City and County of Walla Walla, Washington.

#### XVII.

That plaintiff became a member of said defendant Medical Bureau on or about February 1st, 1949, and later, for a good and sufficient reason, resigned therefrom.

#### XVIII.

That the Constitution and Bylaws of the defendant, Walla Walla Medical Society at all times herein mentioned, prescribed conditions of membership and procedures for disciplining [5] members of the said Society; that said disciplinary procedures were adequate, fair and democratic, and contained certain procedural provisions as follows:

1. Charges of misconduct of a member are to be made in writing;
2. Said charges must be presented in written form to a member of the Society, who must as early

as possible place them before the Board of Trustees of the Society;

3. The Board shall investigate and use kindly efforts in the interest of peace, conciliation or reformation;

4. If the Board believes the charges warrant further proceedings, it shall cause a written copy of the charges to be served on the accused member at least 10 days prior to a Board hearing;

5. At the hearing, the accused member shall have full opportunity to present witnesses and evidence, to cross-examine witnesses, and to rebut evidence;

6. As soon after the conclusion of the hearing as is practicable, the Board shall present a comprehensive summary of its findings and recommendations to a regular or special meeting of the Society, giving notice to the accused physician as to the particular meeting of the Society at which it proposes to do so;

7. The Society shall hear such further evidence or arguments as it deems necessary or equitable and shall then vote on the question;

8. Three forms of discipline are described, which are (a) admonition, where the affected member is censured in open meeting by the President, (b) suspension from the Society, and (c) [6] expulsion.



## XIX.

That the Constitution and Bylaws of the defendant State Association provided in part in Chapter V, Section 3, at the times herein mentioned, that:

“A member of a component Society censured, suspended, or expelled or otherwise disciplined by his component society may appeal to the Board of Trustees (of the State Association) within two months following the date of such disciplinary order for a determination of applicable questions of law or procedure, but not of fact \* \* \* In every case of an appeal, the Board (of trustees of the State Association), prior to any hearing on the appeal, shall exert all proper efforts at conciliation and compromise. The decision of the Board shall be final and bind the appellant member and the component Society unless the matter is carried timely to the Judicial Council of the American Medical Association.” (Contents of parentheses supplied.)

The foregoing quoted provision guaranteed plaintiff an impartial forum to which he could appeal and was an additional safeguard against injury being wrongfully inflicted upon him by illegal acts affecting his membership in the Society, in the State Association, and in the American Medical Association.

## XX.

That despite the aforementioned adequate and democratic provisions for disciplining members,

contained in the Constitution and Bylaws of the defendant Society, the aforementioned secret Grievance Committee was unlawfully devised by the defendants for disciplinary purposes, and with the knowledge, consent and approval of the parent State Association, and the parent American Medical Association was adopted by the defendant Society under the cloak and guise of a public relations committee, and authorized by said Society on or about April 25th, 1950; that the said secret Grievance Committee was under the control of the officers of said Society under the direction of said State Association, its procedures determined but kept secret from the membership of the Society, its members appointed by the then President of the Society, [7] the identity of these members kept secret from all other members of the Society, except the President who appointed them, and that this committee was the only medical Grievance Committee in the entire United States, in which the committee members were kept secret from the other doctor members of the medical Society.

## XXI.

That after the aforesaid secret Grievance Committee disciplined plaintiff on September 30th, 1950, as hereinafter described, the plaintiff, in Society meetings and in numerous mimeographed letters directly to members, repeatedly criticized defendant Medical Bureau and defendant Society, deploring the introduction of a secret disciplinary committee and specifically describing how it violated the defendant Society's Constitution and Bylaws, deplor-

ing the rise of commercialism, the loss of medical freedom, and the dangers of current prepaid medical service plans, which criticisms he believed to be meritorious and important to the welfare of the medical profession and the public.

## XXII.

That the defendants and the said Secret Grievance Committee were not genuinely interested in regulating the ethical behavior of the doctors of the defendant Society; that for at least ten years the defendant Society had maintained a certain member doctor in good standing, which doctor was a notorious narcotic addict with offices in a neighboring city, and that defendants were well acquainted with this fact and took no action thereon.

## XXIII.

That at a regular meeting of the defendant Society held January 25th, 1951, plaintiff presented to the Society the information that another doctor then and now a member of the Society had recently had his narcotic license revoked under threat of prosecution by the Federal Bureau of Narcotics, and plaintiff requested that the defendant Trustees investigate and take disciplinary action [8] in this serious matter; that the defendant officers and trustees never made any response whatever nor took any action on this matter.

## XXIV.

That during the year 1950, the defendant Medical Bureau paid over \$100,000.00 to doctor members

of the defendant Society and over \$90,000.00 to the two defendant hospitals, in connection with prepaid medical services administered and controlled by defendant Medical Bureau; that approximately two-thirds of these sums were public funds; that the defendant doctors expected even greater participation by the government in medical care, and used the defendant Medical Bureau and the secret Grievance Committee as a means to nullify and pervert the democratic functions and powers of defendant Society for the purpose of getting for themselves unfair financial and professional advantages not only under the current program, but also in the anticipated greater government program which they assumed would utilize their established bureaucratic organization and maintain them in permanent control; that defendants thereby did get for themselves unfair financial and professional advantages at the expense of plaintiff.

## XXV.

That after the plaintiff's criticisms of the secret Grievance Committee had gained the support of almost half the membership of the Society, as shown by an official test vote on November 20th, 1950, the fear and enmity of defendants were aroused and they did make use of the aforesaid secret Grievance Committee and by other means the defendants did agree, combine and conspire for the purpose of injuring the plaintiff and the plaintiff's reputation as a doctor, and destroying his medical practice by wilfully causing his expulsion from said Society.



## XXVI.

That as a part of said agreement, combination and conspiracy [9] and pursuant thereto, the expulsion of the plaintiff from defendant Society was unlawfully secured by the defendant doctors, defendant Society, Medical Bureau, State Association, and defendant C. E. Fullerton by purposely doing or failing to do twenty-nine certain acts, which are set forth in detail as follows:

1. The defendants failed to notify the plaintiff of Society meetings, and he was denied information and bulletins which were made available to other members of said Society, and the said Society conducted its meetings in an irregular and incompetent manner.

2. Between August 29th, 1950, and September 26th, 1950, defendant R. W. Stevens, who was a competitor of plaintiff's and purportedly engaged in a medical practice limited to eye, ear, nose and throat diseases, was at all times mentioned herein a powerful and influential member of the defendant Society and defendant Medical Bureau, and was chairman of said secret Grievance Committee, and said defendant undertook to censure plaintiff regarding a charge of \$1.50 which had theretofore been made by plaintiff concerning services rendered to the defendant Noel Edwards on behalf of an infant daughter; that because plaintiff objected in a reasonable manner to the criticism and directed defendant Stevens' attention to unethical practices then being pursued by said defendant in the manu-

facture and sale of lenses and frames in violation of the ethics of the American Medical Association, the defendant Stevens greatly resented the said plaintiff and entertained animosity and malice toward the plaintiff throughout the actions and activities of the said defendants and the said defendant Stevens to be hereinafter detailed.

3. On or about August 29th, 1950, the aforesaid secret Grievance Committee accepted a purported verbal [10] complaint from defendant, Noel Edwards, over the matter of the charge of \$1.50 which plaintiff had made for services as hereinabove alleged; that said defendants failed to secure said complaint in writing and thereby violated Item 1 of Paragraph XVIII above.

4. The said secret Grievance Committee failed to transmit said complaint to the Board of Trustees and said defendants thereby violated Item 2 in Paragraph XVIII above.

5. The said Board of Trustees of defendant Society knew of this complaint, yet it never investigated nor used kindly efforts to settle peacefully this complaint, and so violated Item 3 in Paragraph XVIII above.

6. The said Board of Trustees of defendant Society never served a written copy of the charges on plaintiff and so violated Item 4 in Paragraph XVIII above.

7. The said Board of Trustees never held a hearing on said charges, and so violated Item 5 in Paragraph XVIII above.

8. The said Board of Trustees never presented said charges to the membership of the defendant Society for its consideration and vote on said charges, and so violated Item 6 in Paragraph XVIII above.

9. On or about September 30th, 1950, defendant Stevens, chairman of the aforesaid secret Grievance Committee, and defendant Fullerton, the lay secretary of said secret Grievance Committee and manager of defendant Medical Bureau and executive secretary of defendant Society, caused an official letter to be sent from defendant Society to defendant Noel Edwards, which letter adversely criticized plaintiff's medical services and advised that plaintiff's bill for \$1.50 be not paid. [11] Such official letter constituted a disciplinary action against plaintiff without precedent in defendant Society, violated, the Constitution and Bylaws of defendant Society, and occasioned plaintiff to suffer great humiliation and injured his professional relations with six other relatives of defendant Edwards all of whom were patients of plaintiff.

10. After defendants caused the aforesaid official letter to be sent from defendant Society to defendant Noel Edwards, plaintiff was given new information by his patient, defendant, T. R. Brooks, about his disease, showing that said disease was now in a dangerous and communicable stage, whereupon plaintiff advised defendant, T. R. Brooks and defendant, Noel Edwards, son-in-law of defendant Brooks, regarding certain hazards to defendant T.

R. Brooks, to their families, and to the public, but defendant T. R. Brooks refused to be treated by plaintiff for said disease, and plaintiff then for his own protection and for the protection of the public, properly notified defendant T. R. Brooks by letter on October 10th, 1950, that plaintiff would no longer be responsible for the care of defendant T. R. Brooks, and his wife, and properly notified the Walla Walla County Health Department by letter on October 12th, 1950, of the fact and status of said disease.

11. In the furtherance of their conspiracy to destroy plaintiff's practice and to expel plaintiff from the defendant Society, the defendants then encouraged and procured defendant, T. R. Brooks, to make a purported complaint against plaintiff, charging plaintiff with threatening to and actually disclosing to another, to wit: His son-in-law, defendant, Noel Edwards, the fact [12] that he was suffering from a contagious disease. Said purported complaint was accepted, at a time and place unknown to plaintiff, by defendant, Fullerton, secretary of the aforesaid secret Grievance Committee for and on behalf of said Society and its members. Said purported complaint as so accepted was oral and thereby violated Item 1 in Paragraph XVIII above.

12. The aforesaid defendants who accepted the aforesaid purported complaint of defendant Brooks, failed to transmit same as early as possible to the Board of Trustees that there might be set in motion



all the prescribed and regular procedures described in the Constitution and Bylaws and itemized herein in Paragraph XVIII, Items 1 to 8, inclusive. Instead, said purported complaint of defendant Brooks was, on or about October 11th, 1950, in a meeting of defendant Medical Bureau, unlawfully and publicly publicized, all of which was without precedent in defendant Society and in violation of the Bylaws of the Society, as described in Item 2 of Paragraph XVIII above.

13. The aforesaid meeting of October 11th, 1950, and all that took place therein was fully known to the then officers of defendant Society, and they kept secret from the plaintiff all knowledge of what took place in the said meeting for approximately one month, during which time information as to the defendant Brooks' purported complaint was allowed to circulate widely throughout the membership of the Society and the community generally for the purpose of discrediting plaintiff, all in violation of Items 1, 2 and 3 of Paragraph XVIII above.

14. Subsequent to the aforesaid official letter of [13] September 30th, 1950, plaintiff was advised by various doctor defendants that unless he ceased his criticism of said secret Grievance Committee, the officials of defendant Society, and members of said Grievance Committee, and officers and members of defendant Medical Bureau would assist the defendant Brooks in bringing a legal action against plaintiff which would result in a detriment to plain-

tiff's reputation as a physician, all of which was in violation of Item 3 in Paragraph XVIII above.

15. In an attempt to further buttress, support and assist the defendant Brooks in his complaint against plaintiff, the defendants arranged for said defendant Brooks and his wife to be examined in Spokane, Washington, for the purpose of discrediting plaintiff's diagnosis and maliciously and falsely circulated a report that plaintiff's diagnosis of the defendant Brooks and his wife was incorrect, all of which was calculated to, and did, have an adverse effect on plaintiff's reputation as a physician and further discredited him with his colleagues, and was in violation of Item 3, Paragraph XVIII above.

16. Deeming himself aggrieved and believing that the secret Grievance Committee was contrary to the best interests of the Society, its members and the public, and that it had furthermore dealt with him unlawfully and unfairly in connection with the matter of said disciplinary letter written to said defendant Edwards over said \$1.50 charge, plaintiff, on November 7th, 1950, duly and regularly filed formal charges with the Trustees of said defendant Society, in which he criticized the existence and functioning of said secret Grievance Committee and the dangerous precedents which it had set, and in [14] particular complained of its action regarding the said \$1.50 charge made to his patient, the infant daughter of defendant Edwards.

17. On November 9th, 1950, after the receipt of said formal charges, the defendant doctors comprising said Board of Trustees of defendant Society held a special meeting, entirely ignored plaintiff's aforesaid formal charges, and suddenly and immediately recognized the aforesaid purported complaint of defendant Brooks against plaintiff made approximately one month earlier, and immediately ordered that a hearing be held on said purported complaint of defendant Brooks. Such action and procedure constituted a refusal to investigate or use kindly efforts to settle said purported complaint, all of which was in violation of Items 1, 2 and 3 of Paragraph XVIII above.

18. On or about November 21st, 1950, the defendants who then were members of the Board of Trustees of the Society held a meeting for the announced purpose of hearing the purported Brooks complaint. A stenographer, one Mildred R. Curts, was there present for the ostensible purpose of making a stenographic record of what was said and done at said meeting. At said meeting defendant Brooks was indulged and encouraged to make frivolous, irrelevant, immaterial, incompetent and redundant assertions in support of his purported complaint against plaintiff, while plaintiff was refused the right to discuss adequately the nature and circumstances of the disease of defendant Brooks and his wife, or to quote from any medical books on the subject, and said meeting was therefore con-

ducted in violation of Item 5 of Paragraph XVIII above. [15]

19. A typewritten transcript purporting to include what was said and done at said meeting of the Board of Trustees held November 21st, 1950, was prepared by said stenographer. Said transcript was inaccurate and contained false and misleading statements to the detriment of plaintiff. Such defects were admitted by the defendants, who later, despite this admission, used this inaccurate transcript as evidence against plaintiff in subsequent meetings, to wit: A meeting held by the Grievance Committee of the defendant State Association on April 22nd, 1951, hereinafter referred to, and a meeting of the defendant Society held on May 22nd, 1951, where plaintiff was purportedly expelled, which use was in violation of Item 5 of Paragraph XVIII above.

20. That in a trustee meeting of defendant Society held on December 21st, 1950, the defendant doctors ordered a special assessment of \$338.60 to be levied on the members of defendant Society, to cover the alleged expenses of investigating the Brooks complaint against plaintiff; that the defendant Society authorized said assessment; that this unprecedented assessment made while charges were still pending against plaintiff was malicious and unnecessary, caused his colleagues to turn upon him as a nuisance and a financial burden, and facilitated his expulsion five months later.



21. The defendant doctors who were then officers and trustees of the defendant Society, in a trustee meeting of the Society held December 13th, 1950, voted unanimously that the plaintiff's charges against the secret Grievance Committee and defendant Fullerton were without merit, and voted unanimously that the [16] Brooks complaint against plaintiff be referred to a new State Grievance Committee of the defendant State Association, hereinafter referred to as the State Grievance Committee, which State Grievance Committee at this time had not yet met, had not yet adopted its rules and regulations of procedure, and had never yet functioned in any capacity; which referral was without precedent in defendant Society and violated the Constitutions of defendant Society, of defendant State Association, and of defendant, American Medical Association.

22. The defendant State Association, acting by and through and under the direction of its then duly elected and acting president, Kenneth L. Partlow, and James H. Berge, chairman of the State Grievance Committee, at a time unknown to the plaintiff, aided in the furtherance of the conspiracy hereinabove alleged by causing its said State Grievance Committee to schedule and hold a meeting for the purpose of hearing and decision of the purported complaint against plaintiff of defendant Brooks, and to make recommendations thereon. That said meeting and hearing was held on or about April 22nd, 1951, and that said State Grievance

Committee then made a report and recommendation that plaintiff be suspended from defendant Society for a period of six months, on the grounds that plaintiff threatened to, and did, reveal defendant Brooks' disease to his son-in-law, defendant Edwards, which meeting and hearing and report were without precedent in defendant Society and in defendant State Association, and violated the Constitutions of said Society and said State [17] Association.

23. Prior to the aforesaid meeting and hearing by the State Grievance Committee, the plaintiff challenged in writing and orally the legality and propriety of said meeting and hearing, and communicated such challenge to said chairman thereof, James H. Berge; but that in spite of such challenge the State Grievance Committee, under the direction of its chairman, James H. Berge, acting for and on behalf of defendant State Association, held said meeting and hearing, well knowing and intending that the result of same would be published to defendant Society and used as a force to compel action to be taken against the membership of plaintiff in said Society, affecting his membership therein, and in defendant State Association, and in defendant American Medical Association.

24. The defendant State Association's president, Kenneth L. Partlow, then secured the purported approval of the Board of Trustees of the defendant State Association to the purported State Grievance Committee hearing and recommendation of suspen-

sion of plaintiff, which recommendation was intended to, and did, have the result of illegally injuring plaintiff as hereinafter more specifically set forth. This intervention by the State Grievance Committee and by the defendant State Association before the complaint against plaintiff had been judged by his own colleagues in open meeting of his own Society was unprecedented and constituted a disruption and violation of the lawful and specifically described procedures of regular appeal from the lower to the higher medical organization, as provided in the Constitutions of the defendant Society, the defendant State Association, and the defendant American [18] Medical Association.

25. On or about May 10th, 1951, defendant Tompkins, then president of the defendant Society, peremptorily ordered the plaintiff to appear before a "regular business meeting" of the defendant Society to be held on May 22nd, 1951. Said defendant also issued a general notice to all the members of the defendant Society to attend said denominated "regular business meeting" of the defendant Society. Said general notice stated that there would be a "reading" of the findings of the State Grievance Committee regarding plaintiff, and was so constructed and worded as to confuse, and did confuse, plaintiff and plaintiff's supporters within the defendant Society. It was not contemplated by either plaintiff or those who were in support of him that any action other than the "reading" of the State Grievance Committee's report would take place at

such meeting, and any such "reading" of findings of a State Grievance Committee was without precedent in the defendant Society.

26. On or about May 15th, 1951, in the furtherance of the conspiracy herein alleged, the then trustees of the defendant Society held a purported meeting wherein they unanimously voted:

"\* \* \* that in accordance with the recommendations of the State Grievance Committee, the Board of Trustees recommends that Dr. Miles H. Robinson be sentenced to a suspension of his membership in the Walla Walla Valley Medical Society for a period of six months."

when they knew, or should have known, that said recommendation and action of said State Grievance Committee was void and in violation of the Constitutions of the defendant State Association and the defendant Society, [19] and that their action was in all respects without precedent in defendant Society, and would degrade and injure said plaintiff financially, professionally and socially.

27. In place of merely "reading" the aforesaid State Grievance Committee's report at said meeting of May 22nd, 1951, further procedures were had which included the presentation of defendant Edwards who was encouraged to repudiate, and did repudiate, his previously made statement, recorded at the meeting of the Board of Trustees of defendant Society held November 21st, 1950, where he admitted plaintiff did not disclose Brooks' disease to him; in addition an unexpected vote was taken



on the question of whether or not plaintiff should be expelled from the defendant Society; notice to plaintiff of the character and purpose of this meeting was therefore inadequate and so violated Item 6 of Paragraph XVIII above.

28. In the aforesaid meeting of the defendant Society on May 22nd, 1951, in which plaintiff was wrongfully expelled, defendant Tompkins, then president of the Society, ordered plaintiff out of the meeting without provocation, and after plaintiff was compelled to leave said meeting, an event without precedent in defendant Society, many inflammatory statements were made by the defendants, urging severity against plaintiff on the grounds that otherwise the whole new program of county and state medical Grievance Committees would collapse, which statements plaintiff, in his enforced absence from the meeting, could not rebut or answer, all of which violated Item 5 of Paragraph XVIII above, and violated Chapter I, Section 2, of the Constitution [20] of defendant Society which describes right of members to attend meetings.

29. That in the aforesaid meeting of May 22nd, 1951, the defendant Society expelled plaintiff from membership on the sole grounds of having threatened to reveal and of having actually revealed the disease of defendant Brooks to his son-in-law, defendant Edwards.

## XXVII.

That the complaints against plaintiff and upon which the defendants, and each of them, purported to act, and upon which they based the expulsion of

plaintiff, were false, and that the Code of Ethics of defendant American Medical Association specifically provides that when a physician learns that his patient has a dangerous disease, the physician is obligated by law and custom to give timely notice of that disease to responsible members of that patient's family, and that if the disease is communicable, the physician is further obligated to take "definite action" to protect the healthy associates of the patient at large from infection, all of which was known to the defendants.

#### XXVIII.

That following said unlawful expulsion from defendant Society, and as could reasonably be foreseen by the defendants as the result of these acts herein alleged, plaintiff's malpractice insurance was not renewable and plaintiff was thereby intimidated and substantially prevented from taking on new patients and was made insecure in his practice.

#### XXIX.

That the fact of such expulsion as a part of said agreement, combination and conspiracy and pursuant thereto, was communicated to defendants' hospitals who wilfully and in furtherance of the common design as hereinabove alleged, terminated plaintiff's right to hospitalize patients therein; that said [21] termination was based on the sole premise that plaintiff was no longer a member in defendant Society, which in turn deprived plaintiff of his staff status as a physician on the staffs of the two

said hospitals; that such refusal was continuous on the part of both of said hospitals until March 25th, 1952, when the defendant Walla Walla General Hospital recognized the reversal of the expulsion, which reversal the defendant American Medical Association caused to take place as hereinafter described, and said Walla Walla General Hospital notified plaintiff that it would again accept his patients.

### XXX.

That after the reversal by the defendant American Medical Association, defendant St. Mary's Hospital wilfully refused, in furtherance of said common design, to consider plaintiff's application for renewed membership.

### XXXI.

That on July 9th, 1951, the plaintiff duly and regularly took an appeal from said wrongful expulsion brought about as aforesaid, to the Judicial Council of the defendant American Medical Association, which is the superior and parent organization of defendant Society and defendant State Association, and is the court of last resort afforded within the framework of the mentioned Society, and that the aforesaid American Medical Association reversed the decision of the subordinate groups.

### XXXII.

That despite the fact that said Judicial Council of the defendant American Medical Association had reversed the decisions of the defendant Society and

the defendant State Association by which plaintiff was expelled from membership therein, the defendant Society and the defendant State Association, acting through the individual defendants named, refused for over five [22] months to recognize that reversal and to confirm plaintiff's membership in defendant Society.

### XXXIII.

That the defendant American Medical Association, despite its first ruling in favor of plaintiff, maliciously and wilfully, as a part of the conspiracy, injured plaintiff by doing certain wrongful acts or by delaying decision as specified:

1. After plaintiff appealed to the defendant American Medical Association on July 9th, 1951, the defendant American Medical Association continually and unnecessarily delayed action on plaintiff's appeal for five months, despite the fact that plaintiff's appeal was the only appeal carried to the defendant American Medical Association in the year 1951.

2. The defendant American Medical Association acted in an irregular and improper manner in the notification and scheduling of its first hearing of the plaintiff's appeal in order to make it possible for the defendant Society and defendant State Association to demand a rehearing of plaintiff's appeal to the defendant American Medical Association and such was made possible by its action,



thereby causing further unnecessary delay and injury to plaintiff.

3. The Constitution and Bylaws of the defendant American Medical Association restrict it in appeal cases to considering only matters of procedures followed by its constituent state and county medical societies, and defendant American Medical Association twice held for plaintiff on the grounds of irregular procedures used against plaintiff, but defendant American Medical Association unlawfully and secretly allowed the defendant Society and defendant State Association to present [23] at and before its rehearing on June 7th, 1952, alleged facts about the merits of plaintiff's expulsion which had nothing to do with procedure, while at the same time explicitly forbidding plaintiff to present any facts of his own to show that plaintiff had done no wrong and never deserved expulsion, and said American Medical Association thus bound plaintiff to observance of the rules of the said defendant American Medical Association's Constitution and Bylaws, and discriminatorily allowed the said defendant Medical Society and said defendant State Association to ignore said Constitution and Bylaws.

4. Defendant American Medical Association in its second ruling, handed down following the afore-said rehearing of June 7th, 1952, reaffirmed its first ruling in favor of plaintiff, but its second ruling specifically libeled and injured the plaintiff by stating therein that said Association did not believe that the net result, to wit: the expulsion of

Dr. Robinson, would have been different even if strict compliance had been made with authorized procedures, and said American Medical Association thereby voiced its opinion that the said Dr. Robinson was without defense as to the merits of the complaint of said Society and that said statement of the said American Medical Association was unjustified, improper and without support in the Constitution and Bylaws of said American Medical Association.

#### XXXIV.

That thereafter and following an action instituted in the State Courts of Washington, the defendants publicly stated that plaintiff was mentally unbalanced, suffered from paranoid delusions and was therefore losing patients for said reasons. [24]

#### XXXV.

That the defendants after the plaintiff's wrongful expulsion, and pursuant to said purpose to injure plaintiff, contacted the plaintiff's father, hastened his death, caused him to execute a new will; that about one month after said expulsion, his father executed a codicil to said will, which singled out plaintiff for treatment different from that accorded all of plaintiff's five brothers and sisters; which difference was that said codicil bound up all of plaintiff's inheritance in a trust, the assets of which plaintiff can never touch; that said restriction on plaintiff's inheritance has been and will continue to be injurious to plaintiff; and that none of these things would have occurred had the defendants not



conspired to cause plaintiff's wrongful expulsion from the defendant Society; and had said defendants not performed said acts above set forth, thereby damaging plaintiff in the sum of \$50,000.00.

### XXXVI.

As a result of said conspiracy, expulsion and libel, and the aforesaid acts of the defendants, plaintiff was humiliated, deprived of public confidence and social intercourse, exposed to hatred, ridicule, contempt and obloquy, suffered extreme mental anguish, impaired in his medical work and has suffered the loss of valuable time from medical research by virtue of the acts of the defendants, and said plaintiff has been thereby damaged in the sum of \$100,000.00.

### XXXVII.

That plaintiff has been forced to uproot his entire medical practice and business in the State of Washington and leave the State of Washington and reopen and begin his medical practice in another and foreign state, all to his damage in the sum of \$7,150.00. [25]

### XXXVIII.

That the said plaintiff has suffered great monetary loss in loss of earnings as a result of the unlawful conspiracy, expulsion and other acts of the defendants heretofore set forth, in that prior to plaintiff's said unlawful expulsion his net earnings from medical practice averaged approximately \$1,030.00 per month; that following the disciplinary action

improperly and illegally taken against plaintiff by the said Walla Walla Medical Society on September 30th, 1950, and plaintiff's subsequent wrongful expulsion from the Society, up until May 1st, 1954, and as a direct and proximate result thereof, plaintiff's net earnings did so materially decrease that whereas plaintiff's net earnings would and should have been the sum of \$67,090.00 said earnings, in fact, have been only the sum of \$18,822.00, and said damage resulting has thereby been sustained by plaintiff in the sum of \$48,268.00, and that said loss of earnings will continue for an indefinite time, and the amount of such future loss cannot be immediately shown by plaintiff, but plaintiff alleges that such future loss and damage will exceed the sum of \$60,000.00.

### XXXIX.

As a result of the unlawful and illegal acts with which the defendants are hereinabove charged, plaintiff had certain expenses he would not have had to pay but for the illegal acts above complained of, to plaintiff's damage in the sum of \$3,751.00.

### XL.

Plaintiff also alleges that each and every matter and thing done and performed by the defendants as alleged herein were done and performed by said defendants for their own benefit or for and on behalf of the defendant Medical Bureau and/or the defendant Society and/or the defendant State Association and/or the defendant American Medi-

cal Association, either as members [26] thereof or as officers of said organizations for which they purported to act, or as both, and the said acts as alleged herein which have been performed by the defendants, and all of them, were and are binding on all of them and on all of said defendant corporations.

Wherefore, plaintiff prays for judgment against the defendants, R. W. Stevens, A. A. Yengling, J. C. Lyman, S. R. Page, M. W. Tompkins, R. S. Keyes, F. L. Ralston, A. E. Lange, N. E. Beaver, L. O. Carlson, W. A. Pratt, C. E. Fullerton, T. R. Brooks, Noel Edwards, Walla Walla Valley Medical Society, a corporation; Washington State Medical Association, a corporation; Walla Walla Valley Medical Service Corporation, a corporation; \*St. Mary's Hospital, a corporation; Walla Walla General Hospital, a corporation, and American Medical Association, a corporation, and each of them, in the sum of \$269,169.00.

/s/ R. MAX ETTER,

Attorney for Plaintiff.

[Endorsed]: Filed May 7, 1954. [27]

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\*See Courts' order in above cause dated Dec. 31, 1954.

[Title of District Court and Cause.]

ANSWER OF DEFENDANT

R. W. STEVENS, ET AL.

Come now R. W. Stevens, A. A. Yengling, C. E. Fullerton, T. R. Brooks, J. C. Lyman, S. R. Page, M. W. Tompkins, Noel Edwards, R. S. Keyes, F. L. Ralston, A. E. Lange, Walla Walla Valley Medical Society, a corporation; N. E. Beaver, L. O. Carlson, W. A. Pratt, Walla Walla Valley Medical Service Corporation, a corporation, and answering the Complaint herein, admit, deny and allege as follows:

I.

Referring to paragraph I, these defendants admit that they are citizens and residents of the State of Washington and state that they have no knowledge as to the truth or falsity of the remaining allegations contained in said paragraph and therefore deny the same.

II.

Referring to paragraph II, these defendants admit that the plaintiff on September 13, 1948, was a licensed physician, practicing his profession within the State of Washington at Walla Walla but have no knowledge as to the exact length of time the plaintiff continued to practice his profession at Walla Walla and therefore deny the remaining allegations contained in said paragraph.

III.

Referring to paragraph III, these defendants deny the allegations therein contained. [28]

Referring to paragraph IV, these defendants admit the allegations therein contained.

V.

Referring to paragraph V, these defendants admit the allegations therein contained.

VI.

Referring to paragraph VI, these defendants deny the allegations therein contained.

VII.

Referring to paragraph VII, these defendants deny the allegations therein contained.

VIII.

Referring to paragraph VIII, these defendants admit that the State Association caused a charter to be issued to the Walla Walla Valley Medical Society making such society a component society within the State Association, which charter is now in full force and effect and these defendants deny each and every other allegation contained in said paragraph.

IX.

Referring to paragraph IX, these defendants admit that the Washington State Medical Association is a component association within the American Medical Association, a corporation, and these defendants deny each and every other allegation therein contained.



## X.

Referring to paragraph X, these defendants have no knowledge as to the truth or falsity of the allegations therein contained and therefore deny the same.

## XI.

Referring to paragraph XI, these defendants have no knowledge as to the truth or falsity of the allegations therein contained and therefore deny the same. [29]

## XII.

Referring to paragraph XII, these defendants admit the allegations therein contained.

## XIII.

Referring to paragraph XIII, these defendants admit that the Walla Walla Valley Medical Service Corporation, was at all times therein mentioned and now is a corporation existing under the laws of the State of Washington and was organized and is owned by certain doctor members of defendant Society and these defendants deny each and every other allegation contained in said paragraph.

## XIV.

Referring to paragraph XIV, these defendants deny the allegations therein contained.

## XV.

Referring to paragraph XV, these defendants admit that the plaintiff became a member of the defendant Society on January 25, 1949, and that at

the same time became a member of the Washington State Medical Association and of the American Medical Association; admit the plaintiff's expulsion from the Society on May 22, 1951; these defendants deny each and every other allegation contained in said paragraph.

#### XVI.

Referring to paragraph XVI, these defendants deny the allegation therein contained.

#### XVII.

Referring to paragraph XVII, these defendants admit that plaintiff became a member of the said defendant Medical Bureau on or about the 1st of February, 1949, and later resigned; these defendants have no knowledge as to the truth or falsity of the other allegations therein contained and therefore deny the same. [30]

#### XVIII.

Referring to paragraph XVIII, these defendants admit that the constitution and bylaws of the defendant, Walla Walla Valley Medical Society prescribed conditions of membership and procedures for disciplining members, which procedures were adequate, fair, and democratic, but these defendants deny that the recitation of said procedural provisions as set forth in said paragraph is an accurate and complete recitation thereof.

#### XIX.

Referring to paragraph XIX, these defendants admit that the bylaws of the defendant State Associa-

tion provide in chapter 5, section 3, in part as set forth in said paragraph and these defendants deny each and every other allegation contained in said paragraph.

XX.

Referring to paragraph XX, these defendants deny the allegations therein contained.

XXI.

Referring to paragraph XXI, these defendants admit that the plaintiff in letters to members criticized defendant Medical Bureau and defendant Society; these defendants deny the other allegations in said paragraph contained.

XXII.

Referring to paragraph XXII, these defendants deny the allegations therein contained.

XXIII.

Referring to paragraph XXIII, these defendants deny the allegations therein contained.

XXIV.

Referring to paragraph XXIV, these defendants deny the allegations therein contained. [31]

XXV.

Referring to paragraph XXV, these defendants deny the allegations therein contained.

XXVI.

Referring to paragraph XXVI, these defendants deny the allegations therein contained.

XXVII.

Referring to paragraph XXVII, these defendants deny the allegations therein contained.

XXVIII.

Referring to paragraph XXVIII, these defendants deny the allegations therein contained.

XXIX.

Referring to paragraph XXIX, these defendants deny the allegations therein contained.

XXX.

Referring to paragraph XXX, these defendants deny the allegations therein contained.

XXXI.

Referring to paragraph XXXI, these defendants admit that the plaintiff appealed from his expulsion by the Society to the Judicial Council of the American Medical Association; allege that the Judicial Council purportedly reversed the decision of the Society; deny each and every other allegation therein contained.

XXXII.

Referring to paragraphs XXXII, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX, and XL, these defendants deny the allegations therein contained.

Further Answering Said Complaint and as a First Affirmative Defense Thereto, These Defendants Allege: [32]

I.

That this action has not been commenced within the time limited by law.

Further Answering Said Complaint and as a Second Affirmative Defense Thereto, This Defendant Alleges:

I.

That the plaintiff has been guilty of laches and unreasonable delay in bringing this action.

Wherefore, having fully answered said Complaint, these defendants pray that this action be dismissed with prejudice; that they recover their costs herein, and for such other and further relief as to the Court may seem proper.

/s/ JUDD D. KIMBALL,

Of Attorneys for Answering  
Defendants.

Affidavit of service by mail attached.

[Endorsed]: Filed January 11, 1955. [33]



[Title of District Court and Cause.]

ANSWER OF DEFENDANT  
ST. MARY'S HOSPITAL

Comes now defendant, St. Mary's Hospital, and answering the complaint herein admits, denies and alleges as follows:

I.

Referring to paragraph I, this defendant states that it has no knowledge as to the truth or falsity of the allegations contained in said paragraph and, therefore, denies the same. The true and correct name of the corporation owning and operating St. Mary's Hospital in the City of Walla Walla, Washington, is Sisters of Charity of the House of Providence, a corporation.

II.

Referring to paragraph II, this defendant has no knowledge as to the truth or falsity of the allegations contained in said paragraph and, therefore, denies the same.

III.

Referring to paragraphs III, IV and V, this defendant admits that R. W. Stevens, A. A. Yengling, J. C. Lyman, S. R. Page, M. W. Tompkins, R. S. Keyes, F. L. Ralston, A. E. Lange, N. E. Beaver, L. O. Carlson and W. A. Pratt were and now are physicians licensed under the laws of the State of Washington, but this defendant having no knowledge or [35] information concerning the remaining allegations contained in said paragraphs, therefore, denies the same.

## IV.

Referring to paragraphs VI, VII, VIII, and IX, this defendant has no knowledge as to the truth or falsity of the allegations contained in said paragraphs and, therefore, denies the same.

## V.

Referring to Paragraph X, this defendant denies that St. Mary's Hospital was, or is, a corporation, alleging that said hospital is owned and operated by the Sisters of Charity of the House of Providence, a non-profit corporation of the State of Washington.

## VI.

Referring to paragraphs XI, XII and XIII, this defendant has no knowledge as to the truth or falsity of the allegations contained in said paragraphs and, therefore, denies the same.

## VII.

Referring to paragraph XIV, this defendant denies the allegations contained therein.

## VIII.

Referring to paragraphs XV, XVI, XVII, XVIII and XIX, this defendant has no knowledge as to the truth or falsity of the allegations contained in said paragraphs and, therefore, denies the same.

## IX.

Referring to paragraph XX, this defendant denies that it devised the Secret Grievance Committee as therein alleged, and having no knowledge as to

the truth or falsity of the remaining allegations contained in said paragraph, therefore, denies the [36] same.

X.

Referring to Paragraph XXI, this defendant having no knowledge as to the truth or falsity of the allegations contained therein, therefore, denies the same.

XI.

Referring to paragraph XXII, this defendant denies the allegations therein contained.

XII.

Referring to paragraphs XXIII and XXIV, this defendant having no knowledge as to the truth or falsity of the allegations therein contained, therefore, denies the same.

XIII.

Referring to paragraphs XXV, XXVI, XXVII, XXVIII, XXIX, and XXX, this defendant denies the allegations therein contained.

XIV.

Referring to paragraphs XXXI, XXXII and XXXIII, this defendant having no knowledge as to the truth or falsity of the allegations contained in said paragraphs, therefore, denies the same.

XV.

Referring to paragraphs XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX and XL,

this defendant denies the allegations contained therein.

Further Answering Said Complaint, and as a First Affirmative Defense Thereto, This Defendant Alleges:

I.

That this action has not been commenced within the time limited by law. [37]

Further Answering Said Complaint and as a Second Affirmative Defense Thereto, This Defendant Alleges:

I.

That the plaintiff has been guilty of laches and unreasonable delay in bringing this action.

Wherefore, having fully answered said complaint, this defendant prays that this action be dismissed with prejudice, that it recover its costs herein, and for such other and further relief as to the Court may seem proper.

/s/ WM. KEYLOR SMITH,

Attorney for This Answering  
Defendant.

Duly verified.

Affidavit of mail attached.

[Endorsed]: Filed January 14, 1955. [38]

[Title of District Court and Cause.]

ANSWER OF DEFENDANT WASHINGTON  
STATE MEDICAL ASSOCIATION

Now comes defendant Washington State Medical Association and answering the complaint herein, alleges and denies as follows:

I.

Referring to Paragraph I, this defendant admits that it is a citizen and resident of the State of Washington and states that it has no knowledge as to the truth or falsity of the remaining allegations contained in said paragraph and, therefore, denies the same.

II.

Referring to paragraph II, this defendant admits that the plaintiff on September 13, 1948, was a licensed physician, practicing his profession within the State of Washington at Walla Walla, but has no knowledge as to how long the plaintiff continued to practice his profession at Walla Walla and, therefore, denies the remaining allegations contained in said paragraph.

III.

Referring to paragraph III, this defendant admits that the defendants R. W. Stevens, A. A. Yengling, and J. C. Lyman were, on the dates named, physicians licensed under the laws of [40] the State of Washington and members of the defendant, Walla Walla Valley Medical Society, and this defendant has no knowledge as to the truth or falsity of the



remaining allegations contained in said paragraph and therefore denies the same.

#### IV.

Referring to paragraph IV, this defendant admits that the defendants, S. R. Page, M. W. Tompkins, R. S. Keyes, F. L. Ralston, and A. E. Lange were, at the times mentioned, physicians duly licensed under the laws of the State of Washington and members of the defendant, Walla Walla Valley Medical Society, and this defendant has no knowledge as to the truth or falsity of the remaining allegations contained in said paragraph and, therefore, denies the same.

#### V.

Referring to paragraph V, this defendant admits that the defendants, M. W. Tompkins, N. E. Beaver, L. O. Carlson, S. R. Page and W. A. Pratt were, at the times mentioned, physicians duly licensed under the laws of the State of Washington and members of the defendant, Walla Walla Valley Medical Society, and this defendant has no knowledge as to the truth or falsity of the remaining allegations contained in said paragraph and, therefore, denies the same.

#### VI.

Referring to paragraph VI, this defendant admits that the defendant, C. E. Fullerton, at the times therein mentioned, was the Executive Secretary of the defendant, Walla Walla Valley Medical Society, and this defendant has no knowledge as to the truth or falsity of the remaining allegations contained

in said paragraph and, therefore, denies the [41] same.

#### VII.

Referring to paragraph VII, this defendant has no knowledge as to the truth or falsity of the allegations therein contained and, therefore, denies the same.

#### VIII.

Referring to paragraph VIII, this defendant admits that it is a Washington corporation and a constituent association of the American Medical Association and that it caused the charter to be issued to the Walla Walla Valley Medical Society, making that society a component society within the State Association, which charter is now in full force and effect, and this defendant denies each and every other allegation contained in said paragraph.

#### IX.

Referring to paragraph IX, this defendant admits that it is a component association within the American Medical Association, a corporation, and this defendant denies each and every other allegation therein contained.

#### X.

Referring to paragraphs X and XI, this defendant has no knowledge as to the truth or falsity of the allegations therein contained and, therefore, denies the same.

#### XI.

Referring to paragraph XII, this defendant admits that the defendant, Walla Walla Valley Med-

ical Society, is a Washington corporation and a component part of this defendant, and having no knowledge as to the truth or falsity of the remaining allegations contained in said paragraph, denies the same. [42]

## XII.

Referring to paragraph XIII, this defendant admits that the Walla Walla Valley Medical Service Corporation is a Washington corporation, organized by members of the defendant Society for the purpose of furnishing prepaid medical and surgical services to eligible persons and this defendant denies each and every other allegation therein contained.

## XIII.

Referring to paragraph XIV, this defendant denies the same and each and every allegation therein contained.

## XIV.

Referring to paragraph XV, this defendant admits that the plaintiff became a member of the defendant, Society, on January 25, 1949, and at the same time became a member of this defendant and of the American Medical Association; admits the plaintiff's expulsion from the Society on May 22, 1951; and this defendant denies each and every other allegation contained in said paragraph.

## XV.

Referring to paragraphs XVI and XVII, this defendant has no knowledge as to the truth or fal-

sity of the allegations therein contained and therefore denies the same.

#### XVI.

Referring to paragraph XVIII, this defendant admits that the constitution and bylaws of the defendant, Walla Walla Valley Medical Society, prescribe conditions of membership and procedures for disciplining members, which procedures were adequate, fair and democratic, but this defendant denies that the recitation of said procedural provisions as set forth in said paragraph is an accurate recitation thereof. [43]

#### XVII.

Referring to paragraph XIX, this defendant admits that the bylaws of this defendant provide in Chapter V, Section 3, in part as set forth in said paragraph, and this defendant denies each and every other allegation contained in said paragraph.

#### XVIII.

Referring to paragraph XX, this defendant denies the same and each and every allegation therein contained.

#### XIX.

Referring to paragraph XXI, this defendant has no knowledge as to the truth or falsity of the allegations therein contained and, therefore, denies the same.

#### XX.

Referring to paragraph XXII, this defendant denies the same and each and every allegation therein contained.

## XXI.

Referring to paragraphs XXIII and XXIV, this defendant has no knowledge as to the truth or falsity of the allegations therein contained and, therefore, denies the same, and this defendant specifically denies that it received for itself any unfair financial and professional advantage at the expense of plaintiff.

## XXII.

Referring to paragraph XXV, this defendant denies the same and each and every allegation therein contained.

## XXIII.

Referring to paragraph XXVI, this defendant denies each and every allegation contained in said paragraph excepting only that this defendant admits that the Grievance Committee [44] of this defendant held a meeting on April 22, 1951, to consider and pass upon charges filed by the plaintiff with said Grievance Committee against the Society and to consider and pass upon charges filed by the defendant, Brooks, against the plaintiff, and admits that said Grievance Committee determined that the charges of the plaintiff against the Society were not well founded and further determined that the charges of the defendant, Brooks, against the plaintiff were well founded; further admits that said Grievance Committee recommended to the Society that the plaintiff be suspended from the Society for a period of six months and further admits that said recommendation was approved by the Board of Trustees of this defendant.



## XXIV.

Referring to paragraph XXVII, this defendant denies the same and each and every allegation therein contained.

## XXV.

Referring to paragraph XXVIII, this defendant denies the same and each and every allegation therein contained.

## XXVI.

Referring to paragraphs XXIX and XXX, this defendant denies the same and each and every allegation therein contained.

## XXVII.

Referring to paragraph XXXI, this defendant admits that the plaintiff appealed from his expulsion by the Society to the Judicial Council of the American Medical Association, and that the Judicial Council reversed the decision of the Society, and this defendant denies each and every other allegation contained in said paragraph. [45]

## XXVIII.

Referring to paragraph XXXII, this defendant denies the same and each and every allegation therein contained.

## XXIX.

Referring to paragraph XXXIII, this defendant denies the same and each and every allegation therein contained.

## XXX.

Referring to paragraph XXXIV, this defendant denies the same and each and every allegation therein contained.

## XXXI.

Referring to paragraphs XXXV, XXXVI, XXXVII, XXXVIII, XXXIX and XL, this defendant denies the same and each and every allegation therein contained.

Further Answering Said Complaint and as a First Affirmative Defense Thereto, This Defendant Alleges:

## I.

That this action has not been commenced within the time limited by law.

Further Answering Said Complaint and as a Second Affirmative Defense Thereto, This Defendant Alleges:

## I.

That the plaintiff has been guilty of laches and unreasonable delay in bringing this action.

Wherefore, this defendant prays that this action be dismissed with prejudice and with costs taxed in favor of this defendant.

EGGERMAN, ROSLING &  
WILLIAMS,

/s/ EDW. L. ROSLING,  
Attorneys for Defendant Washington State Medical  
Association.

[Endorsed]: Filed January 17, 1955. [46]

[Title of District Court and Cause.]

**MOTION FOR CHANGE OF VENUE**

Comes now the plaintiff above named, by his attorneys of record, and moves the Court for an order transferring this cause for purposes of trial from the City of Walla Walla, Washington, to the City of Yakima, Washington, both of which cities are within the Eastern District of Washington, Southern Division.

This motion is based upon the records and files herein and upon the affidavit of the plaintiff, Miles H. Robinson, attached hereto.

Dated this 22nd day of December, 1955.

JOHN F. SEMBOWER,  
ROBERT J. McNICHOLS, and  
LYLE KEITH,

By /s/ LYLE KEITH,  
Attorneys for Plaintiff. [47]

[Title of District Court and Cause.]

**AFFIDAVIT IN SUPPORT OF PLAINTIFF'S  
MOTION FOR A CHANGE OF VENUE  
FROM WALLA WALLA, TO YAKIMA,  
WASHINGTON**

Miles H. Robinson, being duly sworn, deposes and says:

1. That he is the plaintiff in the above-entitled cause and that the said cause presently is pending

in this honorable Court for trial in the City of Walla Walla, Washington.

2. From the complaint it appears that the plaintiff was formerly a resident of Walla Walla, Wash., and a medical practitioner there with a considerable clientele; that the defendants include many medical doctors in the said community, as well as the professional medical society which is representative of all the doctors in the City of Walla Walla and Walla Walla County, Washington, and two of the hospitals in the said community.

3. That it appears highly probable that virtually every adult citizen in the City of Walla Walla, Wash., and its environs, at some time during the pendency of this controversy or in the comparatively recent past, is or has been a patient of one or more of the defendant doctors, a patient of one or more of the members of the defendant, Walla Walla Valley Medical Society and the Washington State Medical Society, or a patient in one or [48] the other or both of the defendant hospitals herein. In addition, the Medical Service Bureau is a defendant and figures prominently in the said allegations, and to a unique degree the Bureau extends its activities and influence to all parts of the community, because medical plans under its sponsorship exist in many businesses and industries with numerous employees, stockholders and other affiliates.

4. It also appears from the complaint that the gist of this action is an allegation of a conspiracy

on the part of the individual and institutional defendants to harm the plaintiff in his profession and to destroy his medical practice and his standing as a medical doctor, and it is alleged that many or all of the defendants were engaged in a monopolistic effort which the plaintiff allegedly opposed with the consequences that he incurred the enmity of the defendants herein.

5. That from the foregoing allegations of the complaint it appears that the practice of medicine is an activity touching in some fashion upon virtually every individual of the community, and that the defendants herein as a result thereof exerted an all-pervasive influence upon persons in all walks of life in the said community in their regard for the plaintiff. Moreover, the practice of medicine, by the nature of the intimate confidences and services passing between patient and doctor, commonly engenders an unusually high degree of unquestioning loyalty and partisanship.

6. Furthermore, it is apparent from a letter written by Morton W. Tompkins, M.D., to E. B. Howard, M.D., assistant secretary of the American Medical Association, 535 North Dearborn St., Chicago 10, Ill., which letter was obtained by the plaintiff herein by virtue of a subpoena, that the defendants and members of the defendant organizations do not hesitate to exert their influence upon the attitudes and views of persons in the said community regarding the plaintiff. The said letter, a copy of which is appended hereto and made a part hereof as



Exhibit A, states in part: "He (meaning [49] the plaintiff) has finally reached a lawyer who is willing to consider his case. However, this lawyer very markedly modified his attitude after talking to one of our members and hearing a few of the vital points." It is respectfully represented to this Court that if the defendants would go to such lengths by their own admission as to try to disrupt the relations between attorney and client, they would not stop at any and all measures to similarly influence others regarding the plaintiff, and that from the entire context and tone of the said letter it is probable that they already have done so, or will do so, with the result that the plaintiff cannot expect to obtain an impartial jury or a fair trial in the City of Walla Walla.

7. That during the more than five years that the controversy between the plaintiff and the defendants has taken place in the City of Walla Walla and its environs, a suit was instituted in the state courts, in addition to the instant action, and great interest was excited therein on the part of citizens everywhere in the community, and the matter was widely discussed by persons everywhere in the city and its environs, with many of them expressing views, forming opinions and prejudices, and taking positions one way or the other on the issues as they heard them represented or misrepresented and the matter is notorious throughout the said community which is of modest size and closely integrated in all its affairs.

8. That the plaintiff during the last five years and while still a resident of the said community has received threatening telephone calls from persons known and unknown, and requested police protection on one occasion. He also received anonymous letters of a highly derogatory nature through the mails, and the members of his family were ostracized in many large representative social and service groups in the community, and wholly unsubstantiated charges of misconduct were brought against his son, who was incarcerated for an alleged offense of arson given [50] elaborate publicity in the local daily newspaper without any charges ever having been filed against him or proved.

9. That the leading newspaper in the said community is the Walla Walla Union Bulletin, which is the only daily newspaper in the city, and the said newspaper published inaccurate, incomplete, and misleading accounts of the matter after first leaving the matter so conspicuously alone that rumors became rife in the community that the plaintiff had been suspended from his professional medical societies and lost his affiliation with local hospitals because of charges that were much more lurid than the relatively minor offenses charged against the plaintiff, nor did the said newspaper lift this cloud of suspicion in the community by adequate reporting of the ultimate ruling of the Judicial Council of the American Medical Association in favor of the plaintiff. The said void of newspaper coverage on the said newspaper was in sharp

contrast with much more adequate reporting by other newspapers in other cities throughout the State of Washington, until it was remedied in part following a vigorous protest of the plaintiff to the editors of the said newspaper.

10. That on November 14, 1950, four days after plaintiff had been directed by the defendant Medical Society to appear before it and answer the original charges then pending against him, and while rumors were widespread against the plaintiff in the said Society and the community, the said Walla Walla Union Bulletin gave prominence in its columns to a headline stating:

“American Medical Profession Must ‘Clean House’ or Lose Its Freedom, Physician Says”

the said article quoting at length a speech delivered in St. Louis, Mo., by a Charlotte, North Carolina, physician.

11. That in its newspaper published on or about May 11, 1954, the said Walla Walla Union Bulletin announced the filing of the instant suit in a prominently displayed article bearing the [51] headline:

“W. W. Hospitals, Residents Sued by Ex-Local Physician”

That the purport of the said headline was that a former local physician, now depicted as an outlander, was inflicting a suit upon all the local hospitals and the local residents indiscriminately, and that the same was calculated to engender hatred,

opprobrium, and at the very least, skepticism and disapproval, of the plaintiff, on the part of readers and citizens throughout the community, the same being added to the widespread disapproval already existing on their part as aforesaid.

12. That an editor of the said Walla Walla Union Bulletin was disgruntled and disapproving of treatment, although the said treatment had been medically successful, given by the plaintiff in his medical practice to a member of the said editor's family.

13. That because of the foregoing neither the plaintiff nor this honorable Court may expect a full and fair press coverage in the said community of this cause, either during its pendency or during progress of a trial of the issues therein.

14. That in extensive depositions taken in a lawsuit filed but since dismissed without prejudice by the plaintiff in the Washington State courts, at least five persons testified to false rumors being widely circulated in the said community to the effect that the plaintiff was mentally unbalanced and ought to be committed to a mental institution, had suffered a nervous breakdown, was paranoid, was afflicted with obsessions and delusions, all of which were and are wholly groundless but nevertheless have been the subject of widespread gossip and rumor throughout the City of Walla Walla and Walla Walla County. The foregoing also is reflected in the letter attached hereto and made a part hereof



as Exhibit A, the writer there stating that he was "frankly fearful of direct violence to us or our families." [52]

15. That the members of any jury venire available in the said community must necessarily come from the aforesaid persons who have been or are in the close and intimate relationship with the defendants herein of doctor and patient or hospital and patient, or whose views have been conditioned and prejudiced by widespread publicity, reports, rumors and gossip concerning the plaintiff and his standing as a medical doctor and his medical practice.

16. That this honorable Court also sits in the City of Yakima, Washington, wherein the principals in this lawsuit, both plaintiff and defendants as aforesaid, largely are unknown and where the truths, untruths, misrepresentations and innuendoes of this controversy have not been bruited about, and a venire of prospective jurymen unprejudiced in their views will be readily available with resultant convenience and economy to this Court, the plaintiff and the defendants herein.

17. That many prospective witnesses for both the plaintiff and the defendants herein, and some of the defendants including the defendant Washington State Medical Society are located in Seattle, Washington, and the said city of Yakima, Washington, is located more or less equidistant between Seattle and Walla Walla, Wash., and therefore would be a convenient and economical place for a trial of the issues herein to be held.



18. That under the rules of this honorable Court it is within the sound discretion of the judge to determine the most suitable situs of a trial to be held within the judicial district, and that the said Walla Walla, Wash., and Yakima, Wash., are within the same judicial district.

Wherefore, the Plaintiff respectfully prays that the situs of the trial herein shall be set in Yakima, Wash., instead of Walla Walla, Wash., for the foregoing reasons which he verily [53] believes preclude his having a fair trial of the issues in this cause in Walla Walla, Washington.

/s/ MILES H. ROBINSON,  
Affiant.

Subscribed and Sworn to before me this 19th day of December, A.D. 1955.

[Seal] /s/ ERNEST E. FUMASOLI,  
Notary Public.

My Commission Expires April 16, 1959. [54]

## EXHIBIT A

April 21, 1952.

E. B. Howard, M.D.,  
Assistant Secretary,  
American Medical Ass'n,  
535 North Dearborn,  
Chicago 10, Ill.

Dear Dr. Howard:

In confirmation of our telephone conversation of April 8th, and at your suggestion, I have prepared the enclosed material. In view of this material we are very hopeful that the judicial council will consider the matter thoroughly. Regardless of their decision, would you please notify me by telegram what that decision is? Should the judicial council decide to let the decision stand, the local society wishes to act at once.

There were several points of information brought up in the telephone conversation which I cannot mention in this letter, I do not wish the centered enmity of Dr. Robinson to be pointed toward me. There are several of us here who are frankly fearful of direct violence to us or our families.

Since Dr. Robinson's expulsion from the Society, he has been expending considerable effort to build up as friendly an attitude toward himself as possible outside Walla Walla. He has circularized many of the doctors of the state as well as most of the lawyers within a 200-mile radius with letters and

voluminous correspondence having only his side. These people can and do become sympathetic to his arguments. He has finally reached a lawyer who is willing to consider his case. However, this lawyer very markedly modified his attitude after talking to one of our members and hearing a few of the vital points. Should we be sued, and it is very likely that we shall be, regardless of the outcome of this appeal, the enclosed brief will be the fundamental basis of our defense. The first two pages only constituted the appeal. The State Association has co-operated fully in submitting some of the material presented. I have been working steadily since our telephone conversation, even at the sacrifice of much of my professional work, in order to prepare this brief. The thirteen days consumed have barely been sufficient and I believe supports our contentions in the brief.

Yours very truly,

/s/ MORTON W. TOMPKINS, M.D.

Affidavit of service by mail attached.

[Endorsed]: Filed December 27, 1955. [55]

[Title of District Court and Cause.]

SUPPLEMENTAL AFFIDAVIT IN SUPPORT  
OF PLAINTIFF'S MOTION FOR A  
CHANGE OF VENUE OR TRANSFER OF  
PLACE OF TRIAL FROM WALLA  
WALLA, WASHINGTON, TO YAKIMA,  
WASHINGTON

State of Illinois,  
County of Cook—ss.

Miles H. Robinson, being first duly sworn, on oath deposes and says:

1. That he is the plaintiff in the above-entitled action and that said action presently is pending before the above-entitled court for trial in the City of Walla Walla, Washington.

2. That he has heretofore filed and served a motion for change of venue or transfer of proceedings from the City of Walla Walla to the City of Yakima, Washington; that in support of said motion he submitted his affidavit setting forth his reasons for said motion.

3. That this affidavit is a supplemental affidavit in support of said motion for change of venue or transfer of place of trial.

4. That during the week of January 16, to January 20, 1956, affiant and his attorneys took the oral depositions of a number of the defendants in this action, which defendants resided in the City of

Walla Walla; that in the course of said depositions, a number of the defendants stated, in effect, that the merits of this action were a matter of common controversy among the people of Walla Walla; that a number of the said defendants further stated that the mental condition of affiant was a matter of common controversy among the residents of the City of Walla Walla; that subsequent to said week and during the week of January 23 to 28, 1956, the affiant remained in Walla Walla and talked to various persons who were long residents of that city; that a number of said persons stated to affiant that the merits of this lawsuit [57] had become a matter of controversy in the City of Walla Walla; that a number of them stated to this affiant that in their opinion the people in the community had formed opinions with respect to the merits of this lawsuit.

5. That in order to obtain additional support for his motion to change the venue or transfer the place of trial, affiant obtained letters from various residents of the community of Walla Walla, which letters set forth the opinions of those individuals with respect to the matter under consideration; that a number of those letters are attached to and made a part of this affidavit; that in each case when affiant obtained a letter, he informed the person from whom he obtained it that it was to be used for presentation to this court in support of this motion.

6. That in view of his experience in the community and in view of the statements of a number of the defendants herein as set forth above, and further



in view of the contents of the letters attached hereto, your affiant again respectfully requests that this court grant his motion for a change of venue or transfer of place of trial from the City of Walla Walla, Washington, to the City of Yakima, Washington, or to such other place as this Court may direct. The affiant believes and therefore states that it will be impossible to obtain a jury, the members of which can fairly and impartially try and determine this cause, from Walla Walla or from the surrounding area related to Walla Walla.

/s/ MILES H. ROBINSON,

Subscribed and sworn to before me this 17th day of February, 1956.

[Seal] /s/ MARIAN L. McLEOD,

Notary Public in and for the  
State of Illinois.

My Commission expires October 26, 1959. [58]

1316 Howard Street,  
Walla Walla, Washington,  
January 20, 1956.

I, Belle Olive Rooks, have lived in Walla Walla, Washington, thirty-six (36) consecutive years.

During all of which time I have been active in civic and social affairs of the city.

I have been a member of the Presbyterian Church, the Walla Walla Archaeological Society, City Li-

brary Board, Parks and Civic Arts Club Board. The latter of which I have served as president for the past thirteen years.

I have served as president of the Walla Walla Valley Medical Auxiliary in 1935 and '36 and in 1946 and '47 and have been an active member on its board as well as that of the State Board.

For the past several years I have been an honorary member of both the local and state Medical Auxiliary.

In the last five or six years, since this controversy involving Doctor Miles Robinson and the Walla Walla Valley Medical Society started, I know from my contacts with many people that the case has been widely discussed and that there has been a great deal of prejudice stirred up against Doctor Robinson.

I, therefore, believe it will be difficult, if not impossible, to select an impartial jury in this area which would give him a fair trial of his case.

/s/ BELLE OLIVE ROOKS,  
(Mrs. James T.) [59]

Crescent Drug Company  
"Where Most Folks Buy Their Drugs"  
Main Street at Fourth Avenue  
Walla Walla, Washington

Chas. F. Mochel

To whom it might concern:

With regards to the trial of Dr. M. Robinson, it is my opinion it would be more impartial if conducted elsewhere than Walla Walla. There have been many opinions expressed and so many relatives involved that a true picture would be unlikely.

After 40 years in the drug business in Walla Walla, this seems to me to be the important and fair thing.

/s/ CHAS. F. MOCHEL.

Jan. 28th, 1956. [60]

Jan. 28, 1956.

To whom it might concern:

It was my privilege to have Dr. Miles Robinson act as my husband's physician for almost three years. Words fail to describe what a fine professional attitude Dr. Robinson had at all times. My husband said, "If there ever was a finer doctor who was a scholar, gentleman, and Christian, I haven't met him."

I know that there has been a great deal of talk about Dr. Robinson's trouble with the Medical Society, and I have heard prejudice expressed against him by many people who never knew him at

all. I think it would be very difficult to get a truly impartial jury from the area around Walla Walla to consider his case.

I have taught school in Walla Walla for nineteen years and feel qualified to express this opinion. My late husband was head of the Educational Department at Whitman College.

/s/ ETHEL C. BISHOP. [61]

To whom it may concern:

I have lived in Walla Walla 49 years.

There has been a great deal of talk about Dr. Robinson's controversy with the Medical Society.

I think it would be difficult or impossible to get an impartial jury from the Walla Walla area for his case.

Sincerely,

/s/ FRANCES M. CHANDLER. [62]

Mrs. Nesmith Ankeny  
101 Brookside Drive  
Walla Walla, Washington

January 22, 1956.

Judge Sam Driver,  
U. S. Federal Court,  
Yakima, Washington.

Dear Judge Driver:

We are all alarmed to hear that the trial of Dr. Robinson's case is going to be in Walla Walla.

I have lived here all my life—more than fifty years—and I am convinced that Dr. Robinson could never get a fair jury in Walla Walla or the surrounding area because I have heard so much talk against Dr. Robinson by people who never knew him or anything about the matter and so much prejudice has been created about the case I don't see how a jury could be impartial.

The doctor has a legion of friends here but many people would be afraid to express their true opinion.

Sincerely yours,

/s/ EDNA ANKENY. [63]

January 27, 1956.

Dear Dr. Robinson:

You will be interested to know that last Monday, the doctor for whom I worked fired me without warning, saying that I talked to people about his patient's affairs, and that the reason Dr. Robinson got into trouble was because I talked about your patients when I worked for you.

As you know, the patients who made those complaints against you, I have never even met them, much less talked about them.

You know that I never talk about patients' private troubles. It is terribly unfair to accuse me of such a thing. This doctor was not even in Walla Walla when you were here, so the whole thing is



just ridiculous. I worked hard for him for two years and many of your patients came with me to his office, so I suppose he thinks he doesn't need me any more.

Sincerely,

/s/ GRACE WILKINSON. [64]

Paul Lutton's  
Professional Pharmacy

27 January, 1956.

Judge Sam Driver,  
United States Federal Court,  
Yakima, Washington,

Dear Judge Driver:

I am informed that you will hear the case of Dr. Miles Robinson in the near future.

That all parties involved in a litigation may have a full measure of justice rendered and which is dependent on freedom from any element of bias or prejudice, may I ask that you consider hearing this case in a part of your jurisdiction which is remote from the Walla Walla area.

Very truly yours,

/s/ PAUL E. LUTTON. [65]

To whom it may concern:

In the case of Dr. Miles Robinson I feel that he would be much more apt to get a fair and impartial trial if the case were held in some other area than Walla Walla. There has been lots of talk and publicity on the matter and undoubtedly many people have definite opinions on it. I have lived in this county practically all my life and have been more or less active in many community movements.

/s/ B. F. BREWER.

Jan. 24, 1956. [66]

525 S. College Avenue,  
College Place, Wash.,  
January 24, 1956.

To whom it may concern:

I have lived in Walla Walla 25 years. My work has been as receptionist and office nurse for doctors.

I am convinced that Dr. Robinson could never get an impartial jury in this area.

Sincerely,

/s/ MRS. GRACE (ART)  
WILKINSON.

I have lived in Walla Walla County for nearly forty-five years and after hearing the talk for and against Dr. Robinson I am sure that an impartial jury could not be found in this area.

Sincerely,

/s/ ART WILKINSON. [67]

Walla Walla, Washington,  
January 26, 1955.

To whom it may concern:

It was my good fortune to make the acquaintance of Dr. Miles Robinson soon after he opened his practice in Walla Walla, Washington. As a past president of our local Chamber of Commerce, Kiwanis Club, the Washington State Jewelers Association, and active in many other organizations in our community it is my sincere belief that justice would be best served if Dr. Robinson's case were held in any other city of the Court's jurisdiction than Walla Walla.

Sincerely,

/s/ CLARENCE G. LUDWIGS.

CGL/c

Affidavit of service by mail attached.

[Endorsed]: Filed February 23, 1956. [68]

In the District Court of the United States for the  
Eastern District of Washington, Southern Division

No. 915

MILES H. ROBINSON,

Plaintiff,

vs.

R. W. STEVENS, et al.,

Defendants.

ANSWER OF WALLA WALLA GENERAL  
HOSPITAL

Comes Now the Upper-Columbia Medical Missionary and Benevolent Association, also known as the Walla Walla General Hospital, a Washington corporation, and answering the complaint herein admits, denies, alleges and shows as follows:

I.

Referring to paragraph I, this defendant states that it has no knowledge as to the truth or falsity of the allegations contained in said paragraph and, therefore, denies the same.

II.

Referring to Paragraph II, this defendant has no knowledge as to the truth or falsity of the allegations contained in said paragraph and, therefore, denies the same.

III.

Referring to paragraphs III, IV and V, this defendant admits that R. W. Stevens, A. A. Yengling,

M. W. Tompkins, J. C. Lyman, S. R. Page, R. S. Keyes, F. L. Ralston, A. E. Lange, N. E. Beaver, L. G. Carlson and W. A. Pratt were and now are physicians licensed under the laws of the State of Washington, that this defendant has no knowledge or information concerning the remaining allegation contained in said paragraph, therefore, denies the same.

#### IV.

Referring to paragraphs VI, VII, VIII and IX, this defendant has no knowledge as to the truth or falsity of the allegations contained in said [70] paragraphs and, therefore, denies the same.

#### V.

Referring to paragraph X, this defendant has no knowledge as to the truth or falsity of the allegations contained in said paragraph and, therefore, denies the same.

#### VI.

Referring to paragraph XI, the true name of this answering defendant is The Upper-Columbia Medical Missionary and Benevolent Association, a non-profit, tax-exempt corporation, organized and existing under the laws of the State of Washington, and it is generally known as The Walla Walla General Hospital.

#### VII.

Referring to paragraphs XII and XIII, this defendant has no knowledge as to the truth or falsity of the allegations contained in said paragraphs and, therefore, denies the same.



## VIII.

Referring to paragraph XIV, this defendant denies the allegations contained therein.

## IX.

Referring to paragraphs XV, XVI, XVII, XVIII and XIX, this defendant has no knowledge as to the truth or falsity of the allegations contained in said paragraphs and therefore denies the same.

## X.

Referring to paragraph XX, this defendant denies that it had any part in devising the said secret Grievance Committee as in said paragraph alleged, and, having no knowledge as to the truth or falsity of the remaining allegations contained in said paragraph, therefore denies the same.

## XI.

Referring to paragraph XXI, this defendant having no knowledge as to the truth or falsity of the allegations contained therein, therefore denies the same. [71]

## XII.

Referring to paragraph XXII, this defendant having no knowledge as to the truth or falsity of the allegations contained therein, therefore denies the same.

## XIII.

Referring to paragraphs XXIII and XXIV, this defendant having no knowledge as to the truth or falsity of the allegations contained therein, therefore denies the same.

## XIV.

Referring to paragraphs XXV, XXVI, XXVII and XXVIII, this defendant having no knowledge as to the truth or falsity of the allegations therein contained, therefore denies the same.

## XV.

Referring to paragraph XXIX, this defendant having no knowledge as to the truth or falsity of the allegations therein contained, therefore denies the same.

## XVI.

Referring to paragraphs XXX, XXXI, XXXII, XXXIII, this defendant having no knowledge as to the truth or falsity of the allegations contained in said paragraph, therefore denies the same.

## XVII.

Referring to paragraphs XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX and XL, this defendant denies generally and specially the matters therein contained and specially denies that this defendant is indebted to the Plaintiff in any sum whatsoever or that this defendant in any manner damaged [72] the Plaintiff.

Further Answering Said Complaint, and as a First Affirmative Defense Thereto, This Defendant Alleges:

## I.

That this action has not been commenced within the time limited by law.

Further Answering Said Complaint, and as a Second Affirmative Defense Thereto, This Defendant Alleges:

I.

That the Plaintiff has been guilty of laches and unreasonable delay in bringing this action.

Wherefore, having fully answered said complaint, this defendant prays that this action be dismissed with prejudice, that it recover its costs herein and for such other and further relief as to the Court may seem just and equitable.

/s/ HERBERT H. FRIESE,

Attorney for This Answering  
Defendant.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed March 21, 1956. [73]

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[Title of District Court and Cause.]

PRETRIAL ORDER

Before the Honorable Sam M. Driver, Judge. [74]

Nature of Proceedings

This is an action to recover damages for injuries which the plaintiff claims he sustained to his medical practice as a physician, his professional standing, his professional earnings and earning capacity, and other injuries by reason of wrongful acts and conduct of the defendants, growing out of a con-

spiracy on their part to injure him professionally, to drive him out of his medical practice in Walla Walla, Washington, and to expel him from membership in the Walla Walla Valley Medical Society.

### Admitted Facts

The following facts have been agreed upon by the parties and require no proof:

(1) Plaintiff, Miles H. Robinson, is a resident and citizen of the state of Maryland and is duly licensed to practice medicine in that state and in the state of Washington. The defendants, and each of them, are citizens and residents of the state of Washington. The amount in controversy in this action, exclusive of interest and costs, exceeds the sum of three thousand dollars;

(2) Plaintiff was regularly and duly licensed as a physician under the laws of the state of Washington, entitled to practice his profession in that state from September 13, 1948, to June 15, 1953, in the city and county of Walla Walla, Washington.

(3) Defendants R. W. Stevens, A. A. Yengling and J. C. Lyman, at all times mentioned in plaintiff's complaint, were physicians licensed under the laws of the state of Washington, and members of the defendant Walla Walla Valley Medical Society.

(4) Defendants S. R. Page, M. W. Tompkins, R. S. Keyes, F. L. Ralston, A. E. Lange, N. E. Beaver, L. O. Carlson and W. A. Pratt, at all times mentioned in plaintiff's complaint, were and now

are physicians duly licensed under the laws of the state of Washington, and members of the defendant Walla Walla Valley Medical Society.

(5) The defendant C. E. Fullerton, at all times mentioned in the plaintiff's complaint, was the Executive Secretary of the defendant Walla Walla Valley Medical Society and manager of the Walla Walla Valley Medical Service Corporation. [75]

(6) The defendant Washington State Medical Association, at all times mentioned in plaintiff's complaint, was and now is a corporation, organized and existing under the laws of the state of Washington and a component association of the American Medical Association, and said state medical association caused a charter to be issued to the Walla Walla Valley Medical Society, making such society a component society within the state association, which charter at all times mentioned in plaintiff's complaint was, and now is, in full force and effect.

(7) The American Medical Association caused a charter to be issued to the defendant Washington State Medical Association, making such state association a component association within the American Medical Association, which charter at all times mentioned in plaintiff's complaint, was and now is in full force and effect.

(8) The defendant St. Mary's Hospital is owned and operated by the Sisters of Charity of the House of Providence, a non-profit corporation of the state of Washington.



(9) The defendant Walla Walla General Hospital, at all times mentioned in plaintiff's complaint, was and now is a non-profit, tax-exempt corporation, organized and existing under the laws of the state of Washington.

(10) Defendant Walla Walla Valley Medical Society was incorporated May 2, 1950, and now is a corporation organized and existing under the laws of the state of Washington, and is a component part of the state medical association.

(11) Defendant Walla Walla Valley Medical Service Corporation was at all times mentioned in plaintiff's complaint, and now is, a corporation existing under the laws of the state of Washington, and was organized by certain members of the defendant, Walla Walla Valley Medical Society, for the purpose of furnishing prepaid medical and surgical services to eligible persons.

(12) Other admissions of facts alleged in plaintiff's complaint are as stated in the answers filed by the defendants herein.

(13) Despite any demand for jury trial heretofore made, the plaintiff and each of the defendants have waived a jury trial on all of the issues of this case. [76]

### Plaintiff's Contentions of Fact

The plaintiff is a duly licensed medical doctor in the state of Washington and lately in the state of Maryland, and a member in good standing of the

American Medical Association. He has had an exceptionally broad background of training, research, and teaching in medicine. He started practice on January 15, 1941, at Pasco, Washington, and continued practicing there for about five and a half months. Then a wartime interlude followed during which he was an instructor in the schools of medicine at Vanderbilt and Pennsylvania Universities. He returned to private practice of medicine at Walla Walla, Washington, commencing in September, 1948.

At Walla Walla he started on his own, with a one-man office in his home at 345 East Birch Street. On February 1, 1950, he purchased the practice of the best established physician in the community, Dr. F. N. Campbell. The plaintiff had an established, large, growing practice of internal medicine, built along orthodox lines, but he stressed preventive medicine and accentuated nutrition and diet and the avoidance of unnecessary surgery.

He was deeply interested in professional matters in the medical profession and in that connection he had grave reservations against the formation of a secret grievance committee in the Walla Walla Valley Medical Society—namely, a committee whose membership was kept secret from the members of the Society. He was outspoken in that he protested it vigorously in a speech given before a meeting of the Society on September 26, 1950.

The plaintiff spent time in England studying community medicine there and had formed professional

beliefs which led him also to be an outspoken critic of the operations of a contract medical service plan, of which the Walla Walla Valley Medical Bureau (a corporation wholly owned by physicians in the Walla Walla Valley Medical Society) was a part, and to which, on August 17, 1950, he submitted a letter of resignation—one week after he had written a circular letter to his colleagues setting forth in detail the grounds for his opposition to the Bureau's methods and practices. On the very day that the plaintiff's resignation from the Bureau [77] was accepted, August 29, 1950, the defendant Fullerton, who doubled as the executive officer of both the Walla Walla Valley Medical Society and the Bureau, obtained from one Mrs. Edwards a complaint against the plaintiff to the effect that on June 9, 1950, the plaintiff had wrongfully charged \$1.50 for advice given over the telephone for the treatment of her child who had swallowed a foreign substance, the said complaint being written up on Bureau stationery. On September 30, 1950, the defendant Fullerton dispatched to Mrs. Edwards a letter prepared by the defendant R. W. Stevens, who virtually constituted the secret grievance committee mentioned above. The letter directed her not to pay the bill of \$1.50. Such action was taken without any formal meeting of the grievance committee and without notice to the plaintiff.

Mrs. Edwards' mother also was a patient of the plaintiff, and was suffering from syphilis. She is now deceased. Mrs. Edwards' father had been cor-

rectly diagnosed by the plaintiff as having syphilis, the whole situation being under the plaintiff's management as the physician for this family with the ostensible co-operation of all concerned.

Plaintiff, upon learning of the complaint that Mrs. Edwards had filed, contacted the Edwards-Brooks family. Defendant Brooks revealed to the plaintiff that upon his entry into this country from England in 1947 as an immigrant, he had had a negative venereal disease test. The plaintiff, as a physician, realized that this hitherto undisclosed fact proved that Brooks' syphilis was not the old, ingrown, non-infectious medical difficulty it had appeared to be but was, in fact, a virulent new infection, dangerous to the family living intimately with him, and to the community. Plaintiff pointed out to the defendant Brooks that the breakdown of the whole patient-physician relationship which now threatened, would necessarily result in the interruption of the management of his disease and leave the plaintiff with no alternative but to report the defendant Brooks' disease, according to law, to the public health authorities so that his treatment could continue with another doctor since, as a matter of public health, it did have to be treated. [78]

The defendant Brooks then informed his family of his disease, and then telephoned the defendant Fullerton at the Society-Bureau office. The defendant Fullerton got in touch with the defendant Sam Page and an extraordinary meeting of the trustees of the Walla Walla Valley Medical Society, the



Grievance Committee and the Society's attorney took place two days later, on October 11, 1950, without any notice or warning to the plaintiff. At the meeting the defendant Brooks accused the plaintiff, in his absence, of revealing his venereal disease. Five days later, the Walla Walla Society referred the matter to the State Grievance Committee of the Washington State Medical Association, although still no information or notice had been given to the plaintiff; and none was given, in fact, until November 11, 1950.

There followed in the Walla Walla Society the first expulsion proceeding in the history of the Society since its formation in the 1880's, and this expulsion was replete with departures from the specified procedures as to both the local society and the state society, resulting finally in the plaintiff being expelled on May 22, 1951. This resulted in the loss of his hospital privileges at the two hospitals in the community—the General Hospital and St. Mary's Hospital.

The plaintiff carried his appeals to the highest tribunal in the medical profession, the Judicial Council of the American Medical Association, which conducted a hearing at its meeting in Los Angeles on February 1, 1952. It overturned the expulsion and ordered that plaintiff be reinstated. However, there followed a period of refusal on the part of the officials of the local society, including the defendants here, to recognize the plain directive of the Judicial Council, which, while delayed, did come



through; and also there were behind-the-scenes negotiations which resulted in a rehearing being held by the Judicial Council of the American Medical Association on June 9, 1952. This was the first rehearing ever granted by the Judicial Council. The brief rehearing was held and again the Judicial Council held that the expulsion of the plaintiff was invalid and that the plaintiff should be [79] reinstated.

Meanwhile, plaintiff was deprived of his membership in the Walla Walla Valley Medical Society. His practice dwindled away, his hospital privileges were not available to him, and he lost many patients. All of this was a result of a novel, unusual proceeding pursued by the defendants in concert among themselves, bearing great malice toward the plaintiff; and unusual in that there were instances in the past where there had been narcotic addicts in the Society, one whose license for narcotic dispensing had been revoked, but no action had been taken toward them, only this action visited upon the plaintiff, bespeaking the great malice held toward him.

In the expulsion of plaintiff from the Walla Walla Valley Medical Society and other actions taken against the plaintiff as stated above, the defendants deviated from, violated and failed to comply with the procedural requirements of the constitution and bylaws of said Society in the particulars stated and indicated in paragraphs XVIII and XXVI of plaintiff's complaint.

Contentions of Fact of Defendant  
Washington State Medical Association

The Washington State Medical Association was not a member of any conspiracy to injure the plaintiff. No conspiracy of any kind existed, and every act of the Association, its officers, its committees, or its representatives, and every letter or communication in connection with the plaintiff, was performed, made, or undertaken in the regular course of business of the Association, and all were strictly in compliance with its rules, regulations, bylaws and constitution.

Contentions of Fact of Defendant  
St. Mary's Hospital

The defendant St. Mary's Hospital is an eleemosynary institution in Walla Walla, Washington, owned by the Sisters of Charity of the House of Providence. Neither said defendant nor any of its agents or officers took any part in any conspiracy against the plaintiff. Moreover, plaintiff signed the constitution and bylaws of the medical staff of defendant hospital, thereby subjecting himself to their requirements. In order to practice his profession in the hospital, it was necessary that he be a member of the Walla Walla [80] Medical Society, and when he was expelled from that society, it was incumbent upon defendant hospital (as it did), to remove him from its staff. When he was reinstated by the medical society, defendant hospital did not see fit to reinstate him on its staff for the reason that it did not

consider such action would be for the best interests of the hospital. Such action was not connected in any way, shape or form with any conspiracy against the defendant.

Contentions of Fact of All Remaining Defendants  
(Represented by Attorneys Judd D. Kimball and  
John C. Tuttle)

There was no conspiracy on the part of the defendants to expel plaintiff from the Walla Walla Valley Medical Society, or to otherwise injure him as claimed by the plaintiff; and none of the defendants entered into, joined or participated in any way in such conspiracy. In the disciplinary actions taken against plaintiff, the defendants who had any part therein acted in good faith and in due course of business of the medical society, and said defendant society, its officers, agents and representatives acted in substantial compliance with the procedures prescribed in its constitution and bylaws.

Plaintiff's Contentions of Law

Plaintiff contends as a matter of law that:

(1) The defendants were engaged in a conspiracy, the purposes of which were (a) to injure the plaintiff; (b) to damage the plaintiff's reputation as a physician, and (c) to destroy or seriously damage his medical practice by wilfully causing his expulsion from the Walla Walla Valley Medical Society. (It is submitted that the question of the ex-

istence of a conspiracy is a mixed question of law and fact.)

(2) In the event the evidence fails to establish the existence of a conspiracy, the failure to establish it does not abate the suit. The establishment of liability directly against one or more of the defendants is sufficient to support an appropriate decree based upon tort. [81]

(3) He is entitled to recover judgment for all damages which he has suffered proximately and directly resulting from the wrongful acts of the defendants, pursuant to their unlawful conspiracy, or otherwise, as claimed above in his contentions of fact.

(4) If the court fails to find that there was any conspiracy on the part of the defendants, but finds that the defendants failed to act in substantial compliance with the procedural requirements prescribed in the constitution and bylaws of defendant Walla Walla Valley Medical Society and, as a result thereof plaintiff was wrongfully and unlawfully expelled from said society and suffered injuries as set forth in his contentions of fact, then the plaintiff is entitled to recover damages directly and proximately resulting from such wrongful acts and conduct of the defendants.

(5) The constitution and bylaws of the Walla Walla Valley Medical Society constituted a contract between the Society and its members.

(6) Each and every defendant who engages in a conspiracy is jointly and severally liable for all of the damages proximately resulting from the conspiracy regardless of when in point of time he participated.

(7) If it is established by the evidence that the highest judicial tribunal within the framework of the three organizations, to wit: (a) the Walla Walla Valley Medical Society; (b) the Washington State Medical Association, and (c) the American Medical Association, ruled that the expulsion of the plaintiff was wrongful and not in conformance with the constitution, bylaws and rules of one or more of the several organizations, this court cannot go behind that decision.

(8) If the court determines that such ruling or finding by the highest judicial tribunal referred to above in the preceding paragraph (7) is in effect *res judicata*, the plaintiff may nevertheless introduce testimony and evidence as to all of the proceedings to show the existence of the conspiracy and malice without disturbing the finding referred to above. [82]

#### Contentions of Law of Defendant Washington State Medical Association

(1) The plaintiff has the burden of establishing the conspiracy on the part of the defendants, and the degree of proof required is that it shall be by evidence that is clear, cogent and convincing.



(2) While a conspiracy may be proven by circumstantial evidence, the facts and circumstances relied upon when consistent with a lawful purpose do not prove a conspiracy.

(3) A member of the Washington State Medical Association is bound by, and charged with notice of all its rules, regulations, bylaws and constitution.

Contentions of Law of Defendant  
St. Mary's Hospital

A private hospital has the right to exclude any physician on any grounds or for any reason it may see fit.

Contentions of Law of the Remaining Defendants  
(Represented by Judd D. Kimball and  
John C. Tuttle, Attorneys)

If the plaintiff fails to establish an unlawful conspiracy on the part of the defendants, the plaintiff is not entitled to recover judgment for injuries resulting from expulsion, disciplinary or other action taken against him by the defendant Walla Walla Valley Medical Society.

Issues of Fact

(1) Did the defendants engage in a conspiracy for the purpose of injuring the plaintiff?

a. If so, did or did not each of the individual defendants enter into, join or knowingly participate in such conspiracy?

b. If so, did or did not each of the corporate defendants enter into, join or knowingly participate in such conspiracy through their officers and agents?

c. Did defendants act pursuant to said conspiracy wrongfully to bring about the expulsion of plaintiff from the local medical society?

(2) Were the expulsion and other actions taken against the plaintiff wrongful and in violation of the constitution and bylaws [83] of defendant Walla Walla Valley Medical Society and Washington State Medical Association?

(3) Did the highest judicial authority of the American Medical Association, namely, the Judicial Council, reverse the finding and action of the local medical society and order the reinstatement of the plaintiff?

a. If so, did the defendants wrongfully and in further pursuance of the unlawful conspiracy, unreasonably delay the reinstating of the plaintiff?

(4) Was the plaintiff injured and damaged as a result of any wrongful acts of the defendants, and, if so, in what amount?

### Issues of Law

(1) By what degree of proof does plaintiff have the burden of establishing the claimed unlawful conspiracy on the part of the defendants?

(2) If the plaintiff fails to establish by the required degree of proof that there was an unlawful

conspiracy on the part of the defendants, but plaintiff does establish as a matter of fact that the expulsion and other disciplinary action taken against him were wrongful and unlawful in that they failed, with or without good faith, to substantially comply with the procedural requirements of the bylaws and constitution of the defendant Walla Walla Valley Medical Society, does plaintiff have a claim for which relief can be granted, grounded in tort, for the damages directly resulting from such wrongful and unlawful actions of the defendants?

(3) If it appears as a matter of fact that the highest judicial authority of the American Medical Association, namely, the Judicial Council, found and ruled that the procedural requirements of the bylaws and constitution of the defendant medical society were substantially violated, does it follow that the expulsion and other disciplinary action taken against the defendant by such society were wrongful and unlawful as a matter of law?

### Exhibits

A list of the exhibits produced by the plaintiff and defendants, and marked by the Clerk for identification, is attached [84] hereto, marked Appendix A, and by this reference expressly made a part of this pretrial order. The agreements reached, or position taken by the parties with reference to admission of such exhibits is indicated by the key numbers set opposite said exhibits in the right hand

column. The meaning of such key numbers is as follows:

1. The exhibit will be admitted without objection.
2. The identity and authenticity of the exhibit is admitted but the right to object to the admission hereof on the grounds of competency, relevancy and materiality is reserved.
3. The right to make any and all objections to the admission of the exhibit is reserved.

#### Witnesses

A list of the witnesses whom the plaintiff and defendants expect to call in the trial of this action is hereto attached, marked Appendix B, and by this reference expressly made a part of this pretrial order.

#### Conclusion

It Is Hereby Ordered that the foregoing constitutes the pretrial order in the above-entitled cause. It supplements the pleadings, which are hereby amended to conform hereto. If there is any conflict or inconsistency between the pleadings and this pretrial order, the pretrial order shall govern. This order shall not be amended during the trial except by consent, or by order of the court to prevent manifest injustice.

The pretrial conference in the above case was held March 5, 6 and 7, 1956.

Dated this 19th day of March, 1956.

/s/ SAM M. DRIVER,  
United States District Judge.

/s/ WM. KEYLOR SMITH,  
Attorney for Defendant  
St. Mary's Hospital.

/s/ JUDD D. KIMBALL,

/s/ JOHN C. TUTTLE,  
Attorneys for Remaining  
Defendants.

The foregoing form of pretrial order is hereby approved:

/s/ JOHN F. SEMBOWER,

/s/ ROBERT J. McNICHOLS,  
Attorneys for Plaintiff.

/s/ EDW. L. ROSLING,  
Attorney for Defendant Washington State Medical  
Association.

[Endorsed]: Filed March 19, 1956. [85]

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[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This matter having come on for hearing on March 15, 1956, before the above-entitled Court, Hon. Sam M. Driver, Judge thereof presiding, sit-



ting without a jury, the plaintiff being present in Court and by his attorneys John F. Sembower and Robert J. McNichols, the defendant Walla Walla General Hospital being represented by its attorney Herbert H. Freise, the defendant St. Mary's Hospital by its attorney Wm. Keylor Smith, the defendant Washington State Medical Association by its attorney Edw. L. Rosling, and the remaining defendants by their attorneys Judd D. Kimball and John C. Tuttle, and the plaintiff having introduced his evidence and having rested, and each of the defendants at the conclusion of the plaintiff's case having moved the Court, pursuant to Rule 41-b, Federal Rules of Civil Procedure, for an order dismissing this action [108] on the ground that upon the facts and the law, the plaintiff has shown no right to relief, and the Court having listened to the argument of counsel and having on April 5, 1956, delivered his oral decision in favor of the defendants granting said motions for dismissal, and the Court being now fully advised in the premises, makes and enters the following

### Findings of Fact

#### I.

Plaintiff Robinson is a resident of the State of Maryland, qualified and licensed to practice medicine in said state and in the State of Washington, and the remaining defendants are citizens and residents of the State of Washington. The matter in

controversy herein exceeds, exclusive of interest and costs, the sum of \$3,000.00.

## II.

Plaintiff practiced his profession in the State of Washington from September 13, 1948, to June 15, 1953, in the City and County of Walla Walla, Washington.

## III.

The defendants R. W. Stevens, A. A. Yengling, J. C. Lyman, S. R. Page, M. W. Tompkins, R. S. Keyes, F. L. Ralston, A. E. Lange, N. E. Beaver, L. O. Carlson and W. A. Pratt at all times mentioned herein were physicians duly licensed under the laws of the State of Washington and members of the defendant Walla Walla Valley Medical Society, Washington State Medical Association, American Medical Association and the Walla Walla Medical Service Bureau.

## IV.

The defendant C. E. Fullerton at all times mentioned herein was the Executive Secretary of the defendant Walla Walla Valley Medical Society and Manager of the defendant Walla Walla Valley Medical Service Corporation. [109]

## V.

The defendant Washington State Medical Association at all times mentioned herein was a corporation organized and existing under the laws of the State of Washington and a constituent Association of the American Medical Association.

## VI.

The Walla Walla Valley Medical Society at all times mentioned herein was a corporation organized and existing under the laws of the State of Washington and a component Society of the Washington State Medical Association.

## VII.

The defendant St. Mary's Hospital, whose true name is Sisters of Charity of the House of Providence, a corporation, is a non-profit corporation, organized under the laws of the State of Washington.

## VIII.

The defendant Walla Walla General Hospital, whose true name is the Upper-Columbia Medical Missionary and Benevolent Association, is a non-profit corporation, organized and existing under the laws of the State of Washington.

## IX.

Defendant Walla Walla Valley Medical Service Corporation was at all times mentioned herein a corporation organized under the laws of the State of Washington by certain members of the defendant Walla Walla Valley Medical Society for the purpose of furnishing prepaid medical and surgical services to eligible persons.

## X.

On April 25, 1950, the defendant Society duly and regularly organized a Grievance Committee for the purpose of [110] ironing out minor differences

between doctor and patient, particularly with reference to fees, keeping the people better satisfied, keeping down complaints, and promoting better public relations. This Committee was formed on the recommendations of the American and Washington State Medical Associations. The identity of its personnel was at first kept secret in order to protect the members of the Committee from the undue annoyance of excessive calls at home and office. Defendant R. W. Stevens was the Chairman of this Committee. Defendant C. E. Fullerton properly served as Secretary of this Committee.

## XI.

On August 29, 1950, Mrs. Noel Edwards filed an inquiry or a complaint relating to a charge of \$1.50 made by the plaintiff Robinson. This complaint was referred by the lay Secretary of the Committee to its Chairman who, motivated by the best of purposes, met informally with the plaintiff Robinson in a friendly effort to settle the matter. The attempt resulted in a surprising and unexpected reaction on the part of the plaintiff Robinson, who stated that the Committee had no right or authority to meddle in his business. The Committee, acting informally and in the customary and usual manner of minor committees, met and properly directed the Secretary to write the following letter to the defendant Edwards, with a copy to the plaintiff Robinson: (Plaintiff's Ex. No. 15).

“September 30, 1950.

“Mr. Noel Edwards,

“225 S. E. 6th,

“College Place, Wash.

“Re: Report of Grievance Committee.

Dr. M. H. Robinson.

Date of Complaint, 8/29/50.

Date of Finding, 9/27/50.

“Dear Mr. Edwards:

“Your complaint against Dr. Robinson has been investigated [111] by the Grievance Committee and following is their report:

“ ‘Dr. Robinson was questioned regarding the incident and the facts were substantiated with the exception that Dr. Robinson had called the patient’s home several times and was unable to contact the relatives since the child had been taken to another home.

“ ‘The Grievance Committee feels that it is unfortunate that the dissatisfaction had occurred and feels that some of the responsibility is probably due to the excitement at the time.

“ ‘The charge of \$1.50 which Dr. Robinson made for the telephone calls and the time taken away from his usual other work, does not amount to very much; whereas the majority of doctors in the community do not charge for telephone calls, there is nothing to prohibit them from doing so, and it can be shown to be justified since a doctor assumes responsibility when he gives advice either personal or



over the telephone. He cannot be expected to assume such a responsibility for nothing.

“ ‘In this case, however, since there was a misunderstanding regarding the prescription, the Grievance Committee feels that the best interests of all concerned should be to drop the matter leaving the bill of \$1.50 unpaid, especially since the little patient seems none the worse for her experience.’

“Sincerely yours,

“C. E. FULLERTON,

“Committee Secretary.

“CEF:amb

“cc: Miles H. Robinson, M.D.,  
Drumheller Bldg.,  
Walla Walla, Wash.”

## XII.

The foregoing letter of September 30, 1950, was not in any sense a disciplinary action or punitive proceeding, directly or indirectly, against the plaintiff Robinson, but was in fact a good faith attempt on the part of the Grievance Committee to adjust a minor misunderstanding and difference between a doctor and patient in the interest of better public relations. The plaintiff Robinson's reaction to this letter was extraordinary and unexpected. He engaged in a course of conduct and program of letter writing to other doctors throughout [112] the state, making statements which were not fair and accurate summaries of what was said or what was in-

tended to be said in said letter, which were not justified and which were unduly intemperate. The plaintiff Robinson was too intelligent to read into the letter the things which he attempted to do, and simply wanted to make a great to-do about it and was not too scrupulous about the accuracy of his comments regarding it.

### XIII.

The efforts of the plaintiff Robinson to procure the original letter of September 30, 1950, resulted in the filing by defendant Tom Brooks of a written complaint with the defendant Society against the plaintiff Robinson on November 9, 1950. The plaintiff has not shown by the evidence in this case that the Brooks complaint was false. On the basis of the Brooks complaint the plaintiff Robinson was expelled by the defendant Society on May 22, 1951. Plaintiff Robinson appealed therefrom to the Judicial Council of the American Medical Association which body sustained the appeal and after a rehearing, reaffirmed its decision reversing the action of expulsion. Pursuant to said decision of the Judicial Council of the American Medical Association, the plaintiff was reinstated in the defendant Society. The decision of the Judicial Council was purely on the procedural aspects of the expulsion and held that there had not been strict compliance with the procedural requirements. All of the procedural steps in the expulsion of the plaintiff Robinson were undertaken by the defendant Medical Society and defendant Medical Association in good faith and in

substantial compliance with their respective constitutions and bylaws as they then existed [113] and were under the direction of capable legal counsel. The acts of the individual doctor-defendants in connection with the expulsion proceedings were done and performed as officers, agents and representatives of the respective defendant medical corporations, were done in good faith, in accordance with their duty as they best saw it, and were consistent with the lawful and proper purpose of dealing fairly with a very serious charge of misconduct and in compliance with the constitutions and bylaws of the respective organizations.

#### XIV.

There never was a conspiracy in fact in this case, and the Edwards and Brooks complaints were not influenced or induced by the defendants.

#### XV.

Plaintiff Robinson created some resentment on the part of some of the doctor-defendants because of his attacks made upon the Medical Bureau, the Grievance Committee, by his attitude, by the things that he did and the manner in which he did them, by the intemperate way in which he carried on his attacks, and by his lack of regard for factual accuracy in his criticisms. Such resentment, however, was natural, was not the cause of the expulsion and merely created an unfavorable atmosphere from the viewpoint of the plaintiff Robinson in which to carry on the expulsion proceedings. The final ex-

pulsion was the logical and natural result of his own conduct and the defendants and each of them throughout all of the proceedings acted in good faith.

From the foregoing Findings of Fact, the Court draws the following [114]

### Conclusions of Law

#### I.

No conspiracy as alleged in the complaint existed.

#### II.

There was substantial compliance with the procedural due process provisions of the constitutions and bylaws of the Walla Walla Valley Medical Society and Washington State Medical Association.

#### III.

There was factual substance to the Brooks complaint and the Board of Trustees of the Walla Walla Valley Medical Society in acting thereon did not act injudiciously or capriciously or arbitrarily.

#### IV.

The defendants and each of them throughout all of the proceedings acted in good faith.

#### V.

This action should be dismissed with prejudice and with costs taxed in favor of the defendants.

Done this 26th day of April, 1956.

/s/ SAM M. DRIVER,  
Judge.

Presented by:

/s/ JUDD D. KIMBALL,  
Of Attorneys for Defendants.

[Endorsed]: Filed April 26, 1956. [115]

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[Title of District Court and Cause.]

SUPPLEMENTAL FINDINGS OF FACT AND  
CONCLUSIONS OF LAW RELATING TO  
DEFENDANT ST. MARY'S HOSPITAL

This cause came on duly and regularly for trial on the 15th day of March, 1956, at ten o'clock a.m., before the undersigned Judge of the United States District Court for the Eastern District of Washington, Southern Division, sitting without a jury (a jury having been waived by all of the parties hereto), plaintiff appearing by his attorneys, John F. Sembower, 105 South LaSalle Street, Chicago 3, Illinois, and Robert J. McNichols of Keith, Winston and Repsold, Spokane & Eastern Building, Spokane 4, Washington, and defendant, Sisters of Charity of the House of Providence, a non-profit corporation of the State of Washington (referred to in the caption of this cause as St. Mary's Hospital), appearing by their attorney, Wm. Keylor Smith, 401 Baker Building, Walla Walla, Wash-



ington, and evidence having been presented on behalf of plaintiff, and plaintiff having closed his case in chief and rested, and said defendant [117] then moving pursuant to Rule 41 (b), Federal Rules of Civil Procedure, for an involuntary dismissal on the ground that upon the facts and the law plaintiff had shown no right to relief, and the Court having heard the argument of counsel on said motion and having considered the facts and the law, and being fully advised in the premises, rendered on April 5, 1956, an oral decision granting said motion, Now, Therefore, in conformity with the requirements of Rule 41 (b) aforesaid, the Court herewith makes the following

### Findings of Fact

#### I.

Plaintiff is a resident and citizen of the State of Maryland. Defendant St. Mary's Hospital is owned and operated by The Sisters of Charity of the House of Providence, a non-profit charitable corporation of the State of Washington. The amount in controversy in this action, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars (\$3,000.00).

#### II.

On May 22, 1951, plaintiff was permanently expelled from membership in the Walla Walla Valley Medical Society by action of said Society. On May 25, 1951, defendant St. Mary's Hospital was advised

by the Secretary of said Walla Walla Valley Medical Society that plaintiff was no longer a member of said Society.

### III.

That the Constitution and Bylaws of the Medical Staff of St. Mary's Hospital adopted September 28, 1950, required that a doctor to be eligible for membership on the Medical Staff of said Hospital must be a member of the Walla Walla Valley Medical Society; that membership on said Medical Staff was on May 25, 1951, and now is a prerequisite to a doctor practicing the [118] profession of medicine in said hospital and attending patients therein.

### IV.

That defendant St. Mary's Hospital notified plaintiff by letter dated June 21, 1951, that in accordance with provisions of Article III, Section 3, of the Constitution and Bylaws of the Medical Staff of St. Mary's Hospital plaintiff's membership on the Medical Staff of said Hospital was cancelled and that he was not privileged to attend patients in said hospital.

### V.

That by letter dated February 18, 1952, plaintiff advised St. Mary's Hospital concerning a certain decision of the Judicial Council of the American Medical Association reversing the decisions of the Washington State Medical Association and the Walla Walla County Medical Society relating to plaintiff's expulsion, and in said letter plaintiff requested reinstatement to the Medical Staff of de-

fendant hospital. That on said date plaintiff had not been readmitted to membership in the Walla Walla Valley Medical Society. On or about two weeks thereafter plaintiff was advised in a telephone conversation with Sister Joseph, the then administrator and governing authority of said hospital, that he could not be readmitted to the Medical Staff of said hospital. On June 25, 1952, plaintiff commenced an action in the Superior Court of the State of Washington in and for the County of Walla Walla against St. Mary's Hospital and the other defendants to this cause, the same being Cause No. 38670 of the records and files of the Clerk of said Superior Court. That on July 21, 1952, the Walla Walla Valley Medical Society reinstated plaintiff to membership in said Society. [119]

## VI.

That subsequently plaintiff requested reinstatement to membership on the Medical Staff of St. Mary's Hospital and said request was not granted by the governing authority of said hospital. That there is no evidence that said decision not to reinstate plaintiff to the Medical Staff of said hospital was made in bad faith or from improper motives on the part of the governing authority of said hospital, or was reached in an arbitrary or capricious manner. Plaintiff was not reinstated to membership on the Medical Staff of said hospital for the reason that his said reinstatement was not considered by the then governing authority of said hospital to be in the best interests of said hospital.

## VII.

That there is no evidence that defendant St. Mary's Hospital, or any of its officers or agents, in removing plaintiff from the Medical Staff of said hospital and his privileges therein and in refusing to reinstate plaintiff to said medical staff acted in concert with any of the other defendants herein. The refusal to reinstate plaintiff to membership on said Medical Staff was a decision made independently by the then administrator and governing authority of said hospital. There is no evidence that any of the officers or agents of said hospital conspired in any manner with any other persons in said regard.

From the foregoing Findings of Fact, the Court makes the following

## Conclusions of Law

## I.

That the Court has jurisdiction of the subject matter of this action and the parties thereto. [120]

## II.

That defendant St. Mary's Hospital was required under the provisions of the Constitution and Bylaws of its Medical Staff to remove plaintiff therefrom and exclude plaintiff from the use of its facilities upon receiving notice of his expulsion from membership in the Walla Walla Valley Medical Society.

## III.

That defendant St. Mary's Hospital was required to so continue to exclude plaintiff from its staff and the use of its facilities during the period of time that he was not a member of said Society.

## IV.

That defendant St. Mary's Hospital upon plaintiff's reinstatement to membership in the Walla Walla Valley Medical Society had the right to exclude plaintiff from its Medical Staff and the use of its facilities, and such exclusion rested within the discretion of the managing authorities of said hospital. That there was no abuse of said discretion.

## V.

That plaintiff should take nothing by his action and the same should be dismissed as to defendant St. Mary's Hospital with prejudice and with costs.

Done this 26th Day of April, 1956.

/s/ SAM M. DRIVER,  
District Judge.

Presented by:

/s/ WM. KEYLOR SMITH,  
Attorney for Defendant,  
St. Mary's Hospital.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 26, 1956. [121]



In the District Court of the United States for the  
Eastern District of Washington, Southern  
Division.

No. 915

MILES H. ROBINSON,

Plaintiff,

vs.

R. W. STEVENS, A. A. YENGLING, J. C.  
LYMAN, S. R. PAGE, M. W. TOMPKINS, R.  
S. KEYES, F. L. RALSTON, A. E. LANGE,  
N. E. BEAVER, L. O. CARLSON, W. A.  
PRATT, C. E. FULLERTON, T. R. BROOKS,  
NOEL EDWARDS, WALLA WALLA VAL-  
LEY MEDICAL SOCIETY, a Corporation;  
WASHINGTON STATE MEDICAL ASSO-  
CIATION, a Corporation; ST. MARY'S HOS-  
PITAL, a Corporation; WALLA WALLA  
GENERAL HOSPITAL, a Corporation, and  
WALLA WALLA VALLEY MEDICAL  
SERVICE CORPORATION, a Corporation,

Defendants.

### JUDGMENT

This action came on for trial before the court,  
Honorable Sam M. Driver presiding, and the court  
on April 26, 1956, signed and entered Findings of  
Fact and Conclusions of Law as to all of the de-  
fendants above named, and Supplemental Findings  
of Fact and Conclusions of Law relating to defend-  
ant St. Mary's Hospital, and on the same date or-

dered and directed the Clerk to enter judgment in favor of the defendants on the 4th day of May, 1956.

It Is Ordered and Adjudged, that the plaintiff take nothing, that the action is dismissed on the merits, and that the defendants and each of them recover of the plaintiff, Miles H. Robinson of 1306 Dulaney Valley Road, Baltimore, Maryland, their costs of action.

Done this 4th day of May, 1956.

/s/ STANLEY D. TAYLOR,  
Clerk, U. S. District Court.

Form of Judgment is Approved and Clerk directed to enter.

/s/ SAM M. DRIVER,  
United States District Judge.

[Endorsed]: Filed May 4, 1956. [123]

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[Title of District Court and Cause.]

MOTION FOR AMENDED AND ADDITIONAL  
FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now Comes the Plaintiff, by his attorneys, and respectfully moves this Honorable Court that Findings of Fact and Conclusions of Law prepared by defendants' attorneys and entered by the Court with

minor alterations as to form be amended and added to as follows:

1. That in Finding of Fact III, after the words "Walla Walla Valley Medical Society," there be added: Washington State Medical Association, American Medical Association, and the Walla Walla Valley Medical Service Bureau.

2. That Findings of Fact X. through XV. be stricken entirely, and the following substituted therefor:

#### X.

Plaintiff's opposition to and withdrawal from the Walla Walla Valley Medical Service Bureau; his remonstrance against a letter sent by the defendant C. E. Fullerton, who purportedly acted as secretary of a grievance committee of the local Society, to a patient of his; his active and outspoken opposition to a grievance committee program recommended by the American and State associations and the committee undertaken to be formed pursuant thereto by the local Society; and his numerous letters to his colleagues in the medical profession and statements in meetings of the local Society on these matters and the circumstances of charges filed [124] against him and his expulsion from the local Society and the State association, made the Plaintiff unpopular with his colleagues and incurred the active enmity of the individual defendants.

#### XI.

Organization of the grievance committee of the

local Society never was duly perfected at the times material herein. Its membership was kept secret not only from the public but also from the members of the Society until controversy over the Plaintiff brought it into the open. Two of its four members never functioned, and to all practical purposes likewise were unaware of its existence. Its chairman, the defendant R. W. Stevens, was unknown to the Plaintiff in that capacity of chairman, when he encountered the Plaintiff on the street one day and undertook to discuss a complaint which purportedly had been received from one of the Plaintiff's patients, a Mrs. Edwards, concerning a charge of \$1.50. Without the committee being convened, an investigation being made, or warning to the Plaintiff, the said R. W. Stevens composed a letter which the defendant C. E. Fullerton, as secretary of the committee, copied and sent to the patient, telling her to ignore the bill. Plaintiff learned of this action when a copy of the letter, or at least what at the time purported to be a copy, was delivered to him by Fullerton after the original had been mailed.

## XII.

Although grievance procedure was duly provided for in the constitutions and bylaws of the State Association and the local Society, unprecedented new grievance committees were formed without constitutional authority. Neither committee when it acted with reference to the Plaintiff had any duly constituted rules.

## XIII.

By all commonly accepted definitions of disciplinary action, the letter ostensibly from the grievance committee of the local Society to the Plaintiff's patient telling her to ignore the Plaintiff's bill for \$1.50 constituted such. By decreeing that Plaintiff should not receive that sum, it was in effect a [125] fine. It constituted a public chastisement of the Plaintiff before a patient, and it was corrective and penal toward the Plaintiff in the light of what he was alleged to have done or not done.

## XIV.

Plaintiff reacted strongly to the letter sent to Mrs. Edwards, but that was the natural and logical consequence of the following circumstances: It was a shock for him to have learned in a casual accosting of him on the street by the defendant R. W. Stevens of the existence of a secret grievance committee in his own Society, of Stevens' chairmanship of that committee, and that it was already considering a complaint against him. No investigation had been made of the purported complaint. No orderly meeting of the committee had been held to consider it. The complaint itself was an anomaly on its face, having been made about three months after a medical service was rendered which entirely cured the malady concerned for a sum of \$1.50 which could scarcely have been less and about which no objection had been made to the Plaintiff. The action taken would in all probability—and in fact did—complicate matters for the Plaintiff in his re-



lationships with other members of the family of the grievent, Mrs. Edwards, who were patients of his, notably her father and the dominant force in the family, the defendant Tom R. Brooks, who deeply resented and refused to believe the Plaintiff's diagnoses of syphilis in his wife and himself and was refusing to take treatment therefor.

## XV.

Plaintiff sought to clarify the complaint of Mrs. Edwards and his relations with the family generally, through conversations with Mrs. Edwards and her mother, Mrs. T. R. Brooks; her husband, Noel Edwards, and her father, T. R. Brooks. The two women were friendly during a visit by the Plaintiff, and good-naturedly insisted upon his taking with him a partial payment on Mrs. Brooks' bill. Noel Edwards promised to supply the Plaintiff early in the following week with the letter that had been sent to him by C. E. Fullerton. Only T. R. Brooks was belligerent, and in the course of his conversation with the Plaintiff stated to him that a few years [126] previously, when he had entered the United States as an immigrant, a test had shown negative for syphilis. This completely changed the aspect of Brooks' case, because it indicated that his disease could be contagious, instead of an old ingrown infection which had become noninfectious to others. Plaintiff explained to Brooks the serious potentialities of his disease, and that in the delicate matter of the management of a dangerous and contagious disease the utmost good faith must char-

acterize the physician-patient relationship; that this involved a free and frank disclosure of the letter from C. E. Fullerton which was precipitated by the complaint filed by the daughter. Otherwise, Plaintiff told Brooks, if the patient-physician relationship was ended, the Plaintiff would have to refer the cases of Mr. Brooks and his wife to the local public health officer, in keeping with law and the custom of the doctors in the community, and to inform a responsible member of the family.

#### XVI.

The defendant Brooks continued belligerent; assembled the members of his family and told them of his disease; went to another doctor, whose diagnosis confirmed that of the Plaintiff, and underwent treatment. Plaintiff, who was unaware of these events, duly referred the cases of Brooks and his wife to the public health officer.

#### XVII.

An extraordinary meeting of the available officers, trustees and grievance committee members was convened upon the verbal statement of C. E. Fullerton that Brooks had accused the Plaintiff of threatening to reveal his contagious disease. A stenographer was provided by the defendant local Society, whose transcript with certain alterations became the complaint of Brooks against the Plaintiff. Plaintiff was not informed of the meeting or the purported complaint from the date of the meeting, October 11, 1950, to November 10, 1950, and

no "kindly efforts in the interest of peace, conciliation or reformation," as provided for in Chapter II, Sec. 2(b), of the local Society's Constitution and Bylaws, were undertaken. No "charges in written form of misconduct," as provided [127] for in Chapter II, Sec. 2(a), of the said Constitution and Bylaws ever were given the Plaintiff at any stage of the various proceedings against him.

### XVIII.

The Principles of Medical Ethics of the American Medical Association, 1949 edition, pp. 9-10, provide:

#### "Patience, Delicacy and Secrecy

"Sec. 2—Patience and delicacy should characterize the physician. Confidences concerning individual or domestic life entrusted by patients to a physician and defects in the disposition or character of patients observed during medical attendance should never be revealed unless their revelation is required by the laws of the state. Sometimes, however, a physician must determine whether his duty to society requires him to employ knowledge, obtained through confidences entrusted to him as a physician, to protect a healthy person against a communicable disease to which he is about to be exposed. In such instance, the physician should act as he would desire another to act toward one of his own family in like circum-

stances. Before he determines his course, the physician should know the civil law of his commonwealth concerning privileged communications. (Emphasis added.)

### “Prognosis

“Sec. 3—The physician should neither exaggerate nor minimize the gravity of a patient’s condition. He should assure himself that the patient, his relatives, or his responsible friends have such knowledge of the patient’s condition as will serve the best interests of the patient and the family.” (Emphasis added.)

Plaintiff acted in conformity with the necessary exceptions to the broad general rule that confidences must be preserved. During previous months, Plaintiff had warned Mrs. Brooks and her daughter, Mrs. Edwards, of the risk to Mr. Brooks inherent in his failure to take treatment, but to no avail. The Edwards’ complaint redirected Plaintiff’s attention to this old problem. Plaintiff was justified in delivering a similar warning to a male member of the family in a place of key responsibility, the son-in-law Noel Edwards.

### XIX.

Brooks, by his own testimony, revealed his disease to the members of his family, as a fortunate result of his conversations with the Plaintiff. Other fortunate consequences were that he dropped his stubborn and unscientific opposition to the [128]

diagnosis, had it confirmed, and underwent apparently successful treatment.

## XX.

Noel Edwards' testimony as to what, if anything, the Plaintiff told him about his father-in-law's malady was contradictory both during the original hearings leading to the Plaintiff's expulsion from the local Society, and during this trial, even assuming *arguendo* that Plaintiff had no right under the ethical code to warn the son-in-law.

## XXI.

Stenographic notes taken of Brooks' statements on October 11, 1950, and of the testimony at the hearing held November 21, 1950, by the local Society on the Brooks charges were sketchy, inaccurate, and with many gaps which were filled later on. Comparison of the original notes of the Brooks statement shows that he said, "My granddaughter drank some poison \* \* \* (emphasis added), but this is absent from the final statement. Original notes of the November 21st hearing are blank at the point in the finished transcript where Noel Edwards, at the prompting of his father-in-law, who sharply asked, "What was that?" cut down the scope of a concession that Plaintiff did not discuss his father-in-law's disease with him, to say that Plaintiff "did not use the word syphilis." Among material errors in the transcript is the statement of Plaintiff purporting to be, "I jumped the gun," instead of "he jumped the gun," so that Plaintiff erroneously was



made to appear as though he had made a damaging admission against interest. The said transcript was among the papers supplied to the Judicial Council during its review of Plaintiff's expulsion, and were before the State Association's grievance committee.

## XXII.

There is a significant pattern of dates and occurrences showing that disciplinary moves against the Plaintiff were triggered by actions of the Plaintiff, not directly related to the alleged causes of his expulsion, which angered the defendants. The treatment for which Plaintiff billed the Edwards \$1.50 was given [129] on June 9, 1950, yet Mrs. Edwards made no remonstrance to the Plaintiff and it was not until August 29, 1950—the very day that Plaintiff's resignation from the Medical Bureau was accepted—that she called on C. E. Fullerton, who himself wrote out in detail her purported complaint and appeared to attach extraordinary significance to it considering the smallness of the sum and the success of the treatment. After the defendant Stevens accosted him on the street, identified himself as grievance committee chairman, and told him of the Edwards' complaint, on September 23, 1950, the Plaintiff at the regular meeting of the local Society on September 26, 1950, criticized Dr. Stevens' actions in the matter, and the very next day, on September 27th, the defendant Stevens, without any further investigation, composed the letter telling the patient not to pay. Plaintiff wrote the president of the Society, Dr. Page, on October 9,

1950, complaining of the secret grievance committee and Dr. Stevens' conduct, and on the very day after that letter was received, on October 11, 1950, Brooks was called before an extraordinary meeting of Society trustees and officers to recite charges against the Plaintiff. The Plaintiff, still unaware of the Brooks charges against him, on November 7, 1950, drew up charges against the grievance committee and mailed them, and two days after that the trustees met and preferred the Brooks charges against the Plaintiff. When the Plaintiff secured sufficient signatures to force a special meeting of the Society to consider his charges against the grievance committee (which charges failed by a margin of only one vote), the defendant Page, as president, called the special meeting for the night before the date set for the Society's hearing on the Brooks charges against the Plaintiff, to wit, November 21, 1950.

### XXIII.

At the meeting of November 21, 1950, Plaintiff did not have a full opportunity to present his case, particularly the scientific and technical considerations of the management of Brooks' disease. On May 22, 1951, the Plaintiff, who still had no specific charges against him and whose notice of the meeting read that the purpose was to hear recommendations of the State grievance [130] but without any absolute indication that expulsion itself was to be decided, was expelled from the local Society after many inflammatory and prejudicial statements about the Plaintiff, particularly on the part of the

defendants Page and Stevens, were made to the membership about to vote.

#### XXIV.

After Plaintiff's expulsion from the local Society was an accomplished fact, the defendant Pratt, following a meeting and discussion with other defendants, wrote to the Plaintiff's father, who then was in poor health, and cast aspersions upon the state of Plaintiff's mind, and asked the father to urge his son to drop all matters concerning the defendants. This action was taken after efforts at conciliation would have been unavailing, and was primarily to dissuade Plaintiff from taking any action in the courts or through the Judicial Council of the American Medical Association. As the result of the said letter, the Plaintiff's father caused one of his other sons, a brother of the Plaintiff, to call upon Dr. Pratt, and upon the basis of the said letter from Dr. Pratt and what he told the Plaintiff's brother in conversations and correspondence, the Plaintiff's father shortly before his death revised his Last Will and Testament with reference to the Plaintiff.

#### XXV.

Defendants prolonged the expulsion of the Plaintiff by wilfully refusing to recognize the form of a communication to them on Feb. 1, 1952, of a decision by the Judicial Council of the American Medical Association reversing the actions of the State Association and the local Society, and ignoring an opinion of the State Association's own legal

counsel to the effect that the action of the said Judicial Council had the effect of restoring the Plaintiff to the status quo, as though he had never been expelled. The defendants used prejudicial tactics against the Plaintiff in an effort to influence and even to intimidate the said Judicial Council in a rehearing of the matter, and failing that, attempted to get the Judicial Council to edit its opinion so as to put them in [131] as favorable a light as possible. Finally, on July 21, 1952, after receiving notice of a second decision of the Judicial Council in favor of the Plaintiff, the defendants abandoned their efforts against him, bowed to the verdict of the Judicial Council, and reinstated the Plaintiff to membership.

## XXVI.

The defendant Walla Walla General Hospital and St. Mary's Hospital, at all times material herein had provisions in their bylaws requiring that for a physician to be permitted to send his patients to them, he had to be eligible for membership in the local Society. The day following its expulsion of the Plaintiff, the local Society notified each of the hospitals of the action taken and each terminated the hospital privileges of the Plaintiff. Upon his reinstatement, Plaintiff notified each of the defendant hospitals of the action and requested restoration of hospital privileges. The Walla Walla General Hospital promptly restored the Plaintiff to its rolls, but St. Mary's Hospital failed and re-



refused to do so. Selected members of the local Society comprise the staff councils of the hospitals. The defendant Tompkins testified that the function of the staffs is advisory, adding however that it would be unwise for the hospitals to go against their recommendations. Plaintiff made repeated efforts to be readmitted to St. Mary's Hospital, but was refused without any explanation.

## XXV.

The individual defendants were all members of the defendant local Society, State Association and Medical Bureau, at all times material herein. The defendant Page was president of the local Society in 1950, and the defendants Tompkins, Keyes, Lange and Ralston were trustees; the defendant Tompkins was president of the local Society in 1951, and the defendants Beaver, Carlson, Page and Pratt were trustees; the defendant Keyes was president of the local Society in 1952, and the defendant Carlson was a trustee. The defendant Stevens was chairman of the local Society's grievance committee, and the defendants Yengling, Bohlman and Lyman were members, the latter in an advisory capacity.

3. That the Conclusions of Law should be stricken entirely, and the following substituted therefor:

### I.

Plaintiff had a right to criticize the Medical Bureau, the grievance committees, and the officers and trustees of the local Society, or anything else,



if he wished. Whether these criticisms were intemperate or not has no bearing upon Plaintiff's right to fair treatment by the defendants and due process under the disciplinary procedures prescribed in the constitutions and bylaws of the organizations concerned.

## II.

Unless the Judicial Council is proved to have acted fraudulently, capriciously or arbitrarily, its ruling that Plaintiff was improperly expelled by the defendants is authority with respect to the association rules which this Court will honor. The action herein is to establish the questions of liability and damages for the Plaintiff's alleged loss of his medical practice.

## III.

When livelihoods and whole professional careers hang in the balance, professional associations maintaining grievance committees with the power of economic life and death over their members cannot hide behind a cloak of not being well versed in the legal forms and use such for an excuse to justify failing to provide orderly procedures which constitute due process or failure to adhere to those procedures which have been provided. Nor ought the retention by them of legal counsel alter this, especially when rules are totally lacking or advice is ignored. Such council is not a final oracle, either, as to the interpretation of the rules or law.

## IV.

Matters involving failure to provide orderly rules for grievance committees to follow; failure to prefer charges to a respondent so that he may know against what he must defend himself; failure to conduct hearings in an orderly and judicial manner, free from prejudicial and inflammatory statements against the respondent; [133] and failure to adhere to appeal procedures, are not inconsequential deviations from the needed safeguards for personal and property rights involved. Adherence to such requirements, pedestrian though they may seem, is the stuff of which civil rights and due process are made, and to disparage them and call them minor and unimportant is to open wide the door to oppression. No grievance committee which can initiate a series of proceedings which will cause a professional man to lose his practice and perhaps his entire career can be said to be charged with only minor matters and be excused for operating without rules or regularly convened meetings.

## V.

Public policy requires that dangerous contagious diseases be controlled, and the conduct of one who benightedly refuses to acknowledge a diagnosis by his physician and reacts with belligerence towards the physician, in lieu of taking treatments and thereby rendering himself safe as a member of society, is to be strictly construed when he and

members of his immediate family come bearing charges against that physician for small and collateral matters to a professional society grievance committee.

## VI.

There is circumstantial evidence in the record which points to a conspiracy on the part of the defendants against the plaintiff, and such evidence is cognizable in a conspiracy action. It is for the defendants to rebut this in their testimony.

## VII.

If a conspiracy is not established after all the testimony of the plaintiff and the defendants is in, there yet remains the relief which may be granted the Plaintiff if he has established negligence in a simple tort sense on the part of some or all of the defendants in the implementation of their disciplinary procedures affecting the Plaintiff.

## VIII.

It is within the sound discretion of this Court to overrule a Motion to Dismiss under Rule 41(b), at the end of the [134] Plaintiff's case. The record in this case is so voluminous, running to thousands of pages, and the exhibits are so numerous, being more than five hundred, that the purport of much of the testimony and documentary evidence cannot be assayed until it is analyzed and compared in a process that may take weeks. Under such circumstances, the Court is physically not in a position to

tell whether it has been established that Plaintiff has proved his case, and the Motion ought to be denied.

## IX.

There is authority for the proposition that hospitals can deny at will the admission of patients of any physician, although it is doubtful that such institutions can exercise such power so arbitrarily, capriciously and by such fiat under current circumstances of their growing social importance and the financial support they now receive directly and indirectly from public sources. But to say that this great power, if it does exist, can be transferred at will to some other instrumentality than itself—as in the instant case where the bylaws provide that a physician must be eligible to membership in a certain medical society to be eligible at the hospital—goes too far. By so doing, the hospital claims not only an absolute power but also the delegation of it blindly to another. The vice of this is demonstrated fully if that other instrumentality uses the power in furtherance of a conspiracy.

## X.

The defendants' Motion to Dismiss under Rule 41(b) should be and hereby is overruled, and the defendants are ordered to proceed with their case.

Done this 14th day of May, 1956.

.....,  
Judge.

Presented by:

/s/ ROBERT J. McNICHOLS,

/s/ JOHN F. SEMBOWER,

Of Attorneys for Plaintiff.

[Endorsed]: Filed May 14, 1956. [135]

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[Title of District Court and Cause.]

### ORDER AMENDING FINDINGS OF FACT

The plaintiff, Miles H. Robinson, has filed with and submitted to this court his motion for amended and additional findings of fact and conclusions of law. The court has considered the same and is fully advised in the premises.

It Is Now, Therefore, Ordered that, paragraph I of plaintiff's proposed amendments to the findings is hereby granted, and the Clerk is directed to make, by interlineation, the following amendment to paragraph III of the court's findings: Immediately after the words, "Walla Walla Medical Society," there shall be added, "Washington State Medical Association, American Medical Association, and the Walla Walla Valley Medical Service Bureau."

It Is Further Ordered that, except as to paragraph I, thereof, the motion for amended and additional findings of fact and conclusions of law of the plaintiff is hereby denied for the reason that the adoption of the plaintiff's proposals would require the court to abandon his decision and the grounds



thereof as stated in his oral announcements from the bench at the conclusion of the trial, and in lieu thereof adopt the findings of plaintiff, and [136] reverse the court's decision granting defendant's motion to dismiss under Rule 41 (b) of the Federal Rules of Civil Procedure for District Courts.

Dated this 21st day of May, 1956.

/s/ SAM M. DRIVER,  
United States District Judge.

Copies mailed May 24, 1956.

[Endorsed]: Filed May 22, 1956. [137]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that Miles H. Robinson, the plaintiff above named, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 4th day of May, 1956.

Dated this 18th day of June, 1956.

/s/ ROBERT J. McNICHOLS.

[Endorsed]: Filed June 20, 1956. [2532]

[Title of District Court and Cause.]

## BOND FOR COSTS ON APPEAL

Know All Men by These Presents:

That I, Miles H. Robinson, the plaintiff above named, as principal, and the General Casualty Company of America, a corporation, organized under the laws of the State of Washington and authorized to transact the business of surety in the State of Washington, as surety, are held and firmly bound unto each and all of the above-named defendants in the just and full sum of Two Hundred Fifty Dollars (\$250.00) for which sum, well and truly to be paid, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 18th day of June, 1956.

The Condition of This Obligation Is Such, That,

Whereas, on the 4th day of May, 1956, a judgment was [2533] entered in the District Court of the United States for the Eastern District of Washington, Southern Division, in favor of the defendants in the above-entitled cause and against the plaintiff above named; and

Whereas, the above-named plaintiff, the principal herein, has heretofore given due and proper notice that he appeals from the said decision and judgment of the said District Court to the United States Court of Appeals for the Ninth Circuit;

Now, Therefore, if the said principal shall pay to the said defendants above named all costs if the appeal is dismissed or the judgment affirmed or such costs as the appellate court may award if the judgment is modified not exceeding the sum of \$250.00, then this obligation to be void, otherwise to remain in full force and effect.

MILES H. ROBINSON,

By /s/ ROBERT J. McNICHOLS,  
His Attorney.

[Seal] GENERAL CASUALTY COM-  
PANY OF AMERICA,

By /s/ R. G. LYONS,  
Attorney-in-Fact.

Approved this . . . . day of June, 1956.

.....,  
Judge.

[Endorsed]: Filed June 20, 1956. [2534]

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[Title of District Court and Cause.]

MOTION FOR ORDER EXTENDING TIME TO  
FILE RECORD AND DOCKET CAUSE IN  
APPELLATE COURT

The plaintiff-appellant, by his attorneys of record, moves the Court for an order extending the time to file the record on appeal and docket the cause in the appellate court to and including the

15th day of September, 1956, upon the ground that the notice of appeal was filed on the 19th day of June, 1956; that 40 days from that date have not yet elapsed and that additional time is necessary to properly prepare the record for the appellate court. This additional time is requested for the following reasons:

1. The number of exhibits introduced in this action is great and substantial time is needed to go over the exhibits to prevent duplication.

2. The record of the proceeding is somewhat lengthy and requires some digesting.

3. The attorneys for the plaintiff are located in cities a considerable distance apart and the plaintiff himself resides at a great distance from either of his counsel.

/s/ ROBERT J. McNICHOLS,

JOHN F. SEMBOWER,

Attorneys for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 13, 1956. [2535]

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[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR  
DOCKETING APPEAL

This matter having come before the Court and it appearing that the clerk will have insufficient time

to prepare and file the record on appeal and docket the cause in the appellant court unless the time for said filing and docketing is extended to and including ninety days from the date of the filing of the notice of appeal, Now, Therefore, it is hereby

Ordered that said time for filing the record on appeal in the appellate court be extended to and including the 18th day of September, 1956.

Dated this 11th day of September, 1956.

/s/ SAM M. DRIVER.

[Endorsed]: Filed September 11, 1956. [2538]

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[Title of District Court and Cause.]

ORDER EXTENDING APPELLANT'S TIME  
FOR DOCKETING APPEAL AND FILING  
RECORD ON APPEAL

This matter having come before the Court upon the motion of the plaintiff-appellant, by his attorney of record, for an order extending the time for filing the record and docketing this cause in the appellate court and it appearing to the Court that 40 days have not elapsed since the notice of appeal was filed on the 19th day of June, 1956,

It Is Hereby Ordered that the time within which the plaintiff-appellant shall be required to file the record on appeal and docket this cause in the appel-



late court is hereby extended to and including the 15th day of September, 1956.

Done in Open Court this 17th day of July, 1956.

/s/ SAM M. DRIVER,  
Judge.

Presented by:

/s/ ROBERT J. McNICHOLS,  
Attorney.

[Endorsed]: Filed July 17, 1956. [2537]

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In the District Court of the United States, for the  
Eastern District of Washington, Southern Division

Civil No. 915

MILES H. ROBINSON,

Plaintiff,

vs.

R. W. STEVENS, et al.,

Defendants.

## RECORD OF PROCEEDINGS

March 15-16, 1956

Be It Remembered that the above-entitled cause came on for trial before the Honorable Sam M. Driver, Judge of the above-entitled Court, sitting without a jury, at Walla Walla, Washington, on

March 15, 1956, at 10 o'clock a.m.; whereupon, the following proceedings were had, to wit:

The Court: I received your communications with reference to your trial briefs and the pre-trial order, and taking up first the letter from the plaintiff, that has to do with the contentions of law of the plaintiff and, of course, I think that within reasonable grounds each party should be permitted to state his own contentions because the other party is not bound by them, of course, so that I propose to include these or work them into the order. I assumed that you hadn't intended these to replace what I had stated, but rather to supplement them. Wasn't that your thought, or what was your idea on that, Mr. McNichols?

Mr. McNichols: That's right, your Honor. In view of the letter which we received from the Court and which I concurred in, there did appear to be a little bit of confusion in what the issues were, and I felt it would be of some assistance to the court in clarifying our contentions of law.

The Court: What I thought should be done is to put in about two of these in advance of mine and work them in in [3\*] that way to supplement the ones that I have stated.

Mr. McNichols: However the Court feels best.

The Court: It is better to overstate than understate, I think, and that certainly would clarify it.

Now, as to Mr. Rosling's communication here, I think that that should be added at the point in the

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\*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

rough draft of the pretrial order where the State Medical Association's contentions of law are stated. That appears on Page 11, I believe, of the contentions of law of the defendant Washington State Medical Association, and I propose this, Mr. Rosling, I think it would meet your suggestion, I should think, and that is under 1 I have stated the plaintiff has the burden of establishing the conspiracy on the part of the defendants and the degree of proof required is that it shall be by evidence that is clear, cogent, and convincing, then add your language: "While a conspiracy may be proven by circumstantial evidence, the facts and circumstances relied upon, if consistent with a lawful purpose, do not prove a conspiracy." If that is added in there, it would bear out what you had in mind, would it not?

Mr. Rosling: Yes, I think that would be adequate, your Honor.

There was one additional thought which was dictated into our contentions, that of mere suspicion, in and [4] of itself, is not enough.

The Court: Well, I think that that almost goes without saying.

Mr. Rosling: Then, I am satisfied.

The Court: I am putting in on plaintiff's, for instance, that any conspirator who joins a conspiracy at any stage and knowingly participates is equally liable with the others. I think that is a proposition of law that can scarcely be questioned, too. I would assume that that is inferred, at any rate.

Mr. Rosling: Very well.

The Court: One other thing here in connection with the pre-trial order, my secretary has completed the list of exhibits and witnesses that are to be attached here, and just as soon as I make these alterations in the rough draft and get it into final form, copies will be supplied to counsel.

Now, I think there should be some mention here, I notice in listing the exhibits that no right is reserved separately by the defendants to object to any exhibit and I notice that here is no specification in the defendants' exhibits that they are for a particular defendant or set of defendants, so that I assume, and May I assume, that you are acting jointly in this matter of stating your position with reference to plaintiff's offers and with reference to your [5] own offers of exhibits?

Mr. Kimball: We will agree on that and objections and reservations will be for all defendants, I think.

The Court: Of course, where you are making a general reservation, it would apply to each of you so any one of you would have a right to raise the objection, but with reference to the offers, I assume that when any exhibit is admitted for any defendant here or presented by the defendants, that it will be assumed to apply, so far as it is pertinent, to all the defendants and be an exhibit of all the defendants.

Mr. Rosling: I had this additional thought, your Honor, I believe that when the conspiracy is once

shown, that the act of any of the conspirators is admissible against any of the others.

The Court: That's right.

Mr. Rosling: But until that conspiracy is shown, I do not believe that the acts of other parties, for instance, would be binding against the State Medical Association. I realize, too, that the conspiracy cannot be shown right at the start, and it was my thought to express a general objection to the introduction of evidence of the acts of other parties in so far as they may affect the State and then I would assume that the Court would permit its introduction subject to their subsequently proving the existence of the [6] conspiracy.

The Court: That is what you usually have to do in a conspiracy case.

Mr. Rosling: Yes. Then, may I consider it unnecessary to make specific objections?

The Court: Well, that's right, with that understanding, I think it would be unnecessary. I suppose it goes without saying that in a conspiracy, after it is established, the acts and declarations of any conspirator are binding on all the others.

Mr. Rosling: That is correct.

The Court: That the existence of the conspiracy or the fact that a particular defendant did or did not join and participate in it may not be shown by acts and declarations of the other parties.

Mr. Rosling: Correct.

Mr. Smith: I think that would apply to the hospital also, your Honor. [7]



The Court: I will say this for the benefit of all attorneys, and I find that I, who am supposed to be quite familiar with the Civil Rules, do not rely upon my memory and consult them each time, but I think you will find that as far as a party is concerned, it doesn't make any difference whether the party is beyond the jurisdiction or wherever it may be, the deposition of a party may be used for any purpose. Those of other witnesses may be used only if they are 100 miles from the place of trial or out of the jurisdiction, unless you wish to use them for impeachment or cross-examination. But a party, you can use whether he is here or not.

All right, you may proceed.

Mr. Rosling: One question with reference to the issues of law which are expressed. I have before me Page 13 of the Court's proposed form of order, and the second [13] paragraph deals with the right of the plaintiff to recover in the event that the evidence fails to disclose a conspiracy.

The Court: Page 14, did you say?

Mr. Rosling: On Page 13. I am referring specifically to the second paragraph.

The Court: Oh.

Mr. Rosling: And also to line 4 of the second paragraph, reading: "Actions taken against him were wrongful and unlawful in that they failed to substantially comply with procedural requirements."

It is our position that there should be injected one additional element.

The Court: Let's see, I haven't found that, I'm sorry. Under 2?

Mr. Rosling: Under Paragraph 2, Page 13.

The Court: I see here in the rough draft there are two paragraphs numbered 2. That will have to be corrected. Is it the second 2?

Mr. Rosling: The first No. 2.

The Court: Oh, I see. That is an error I didn't notice before.

Mr. Rosling: I hadn't seen it either. And particularly in line 4, which to identify I read: "Actions taken against him were wrongful and unlawful in that they failed [14] to substantially comply with procedural requirements."

Did the Court find that?

The Court: No, I didn't pick it up.

Mr. Rosling: Well, first, we are on Page 13. Do the drafts all correspond?

The Court: They are suppose to, yes. Oh, yes, I see where it is now.

Mr. Rosling: All right, on the 4th line of that paragraph, we feel that there has been omitted from that line one element which we regard as essential. I will read that line inserting the element which I feel should be inserted and the Court will notice where it differs from the context:

"Actions taken against him were wrongful and unlawful in that they failed 'to act in good faith' to substantially comply," et cetera.

The Court: Do you have any comment on that, Mr. McNichols?

Mr. McNichols: Do I understand correctly that this is the proposed issue of law of the defendants?

The Court: No, these are the issues of law. They are simply an attempt to clarify and make the issues a little more definitive for the benefit of counsel and the Court. I don't think that we need to be too concerned about them because, after all, they are only what we think now [15] will be the propositions of law that should be kept in mind and have to be decided eventually.

I think what counsel has in mind here, and it is a thing that I have given thought to, I understand from your statement in the pretrial conference that your principal reliance, if I may put it that way, is the conspiracy; that you assert the conspiracy and you confidently expect to prove it. As I understand, that is your position.

Mr. McNichols: That's right.

The Court: But assuming that the Court does not consider that it is established or is established by the required degree of proof, then the thought occurred to me, just what have we got then here if we have a situation where a physician has been expelled from the medical society and has suffered damage because the procedure prescribed by the society has not been followed and there hasn't been any conspiracy or any bad faith?

Now, counsel seems to think it would require bad faith as an element. Now, I don't know whether you agree with that or whether you think just the very fact of expulsion is sufficient.

Mr. McNichols: Of course, your Honor, we will get into the determination of the legal implication of the term "good faith" and as the term is com-

monly construed. We for the plaintiff do not agree that that is necessary, that [16] there need be a necessary showing of bad faith in a procedure such as was conducted in this case in order to establish liability.

The Court: Well, I suppose it might have some bearing on the amount of damages and it might have some bearing on what particular defendants you could include here, but other than that we are wasting a lot of time on conspiracy if all you have to prove is they didn't follow the procedure. As I understand, you say the highest judicial tribunal of the American Medical Association held that they hadn't and you say that that is binding on this Court. It seems to me that you could introduce the finding and decision of the medical association and then prove your damages and ask for judgment here.

Mr. Kimball: That is our point, your Honor.

The Court: I don't see why we should go to all of these days and days and days of trial on conspiracy if all you have to prove is that they didn't follow the procedure and that that makes them liable so far as the participants are concerned.

Mr. McNichols: Well, your Honor, it is a rather unique——

The Court: Of course, I appreciate this, that in the Federal practice you have a right to plead and present alternative contentions, present them alternatively. You are [17] not required to take the right hand or the left hand road and forever be bound by it. You can say, well, it is this or that, so that I



suppose what your contention is is that you rely upon the conspiracy, but even if you fail to establish it to the Court's satisfaction, you wish nevertheless to be in a position to present the other.

Mr. McNichols: That's right, your Honor.

The Court: Although you wouldn't be willing to adopt it as the main course at the outset. Does that state your position?

Mr. McNichols: Yes, your Honor. And I don't know if the Court has seen the memorandum which the plaintiff submitted on the question of recovery in the event the conspiracy failed, the plaintiff's trial memorandum No. 1. There is substantial authority for the proposition that a party can proceed on the theory of conspiracy and recover, in the absence of a showing of conspiracy, in tort, even though that tort may involve some elements of contractual relationship, and that the gravamen of the action is not the conspiracy but is the tort committed pursuant to the conspiracy, and that the theory of conspiracy is one designed for a situation precisely as we have here and as the evidence will indicate, in order to establish liability on a number of defendants who participated and also insofar as the conspiracy law applies to the rules of admission of [18] evidence.

The Court: Well, I think that that would be true, in a sense, of almost every civil conspiracy which is the basis of civil action. The conspiracy is the agreement or agreement in confederation the plan and understanding in the agreement to do something that will result in another's injury. If that is as far as it goes, there could never be any right of action.



It would have to be carried forward to the point where enough was done to actually injure the plaintiff or the other part in order to give rise to a cause of action. So that, strictly speaking, in every case your cause of action would not be the conspiracy but the results of the conspiracy.

Mr. McNichols: Yes, sir.

The Court: The wrongful results. But I don't know that we need to spend a great deal of time on this at this stage. I think that we should bear in mind that all I am trying to do here is to set up what the questions are that the Court will have to determine and neither party is bound here, although if your contention is that you have a right to recover if they expelled Dr. Robinson from the society here without medical society due process, if I may put it that way, that you are entitled to recover from that alone, regardless of their good faith or bad faith, that is one thing. If you have to show that there was some unlawful [19] purpose there or improper purpose, bad faith, that is another thing. I think we might probably serve the purpose or any purpose Mr. Rosling had in mind by simply putting in the question here in that they failed, with or without good faith.

Mr. Rosling: That is all right.

The Court: With or without good faith, and that leaves the question open. One side may claim without would be sufficient and the other side would take the position there must be good faith.

Mr. Rosling: That is satisfactory.

The Court: All right. Now, is there anything else?

Mr. Kimball: With the permission of the Court, could I excuse the witnesses that are here and let them go back to work? [20]

\* \* \*

Mr. Rosling: \* \* \* Now, up to this point, there has been only one contact with the local society and that occurred on June 2, 1950, in which Mr. Fullerton, I believe, wrote to Mr. Neill and Mr. Neill answered, inquiring as to what the state was doing, if anything, with reference to the formation of a grievance committee. Now, that I am sure, being prior to all of these events, has no relationship whatever with Dr. Robinson.

Now, that is everything that has transpired so far [83] as Dr. Robinson is concerned down through—well, with one exception, it goes down to December 16th of 1950.

Now, December 16th of 1950, was the date on which the executive secretary of the society wrote to the executive secretary of the state association saying that the Brooks against Robinson dispute, pending down here at Walla Walla, they would like to refer to the state grievance committee. I said with one exception and that exception was this:

On October 16th, the society wrote to Mr. Neill in Seattle requesting any information they might have as to the state grievance committee. Mr. Neil answered that letter, not mentioning Robinson in either correspondence. Mr. Neill answered that letter

advising them as to the then extent of the formation of the grievance committee. [84]

\* \* \*

The state did not prepare any brief or statement of facts, so far as I know, for that Los Angeles hearing, which was held on the 2nd of December. However, representatives of the state, our delegates from the state to the AMA convention, of course, were present at the AMA meeting in Los Angeles and were present when this matter was heard by the Judicial Council. [90]

\* \* \*

### MILES H. ROBINSON

plaintiff herein, being first duly sworn, was called as a witness on his own behalf, was examined, and testified as follows:

#### Direct Examination

By Mr. McNichols:

Q. Would you state your name, please, Dr. Robinson? A. Miles Hadley Robinson.

Q. And where do you now reside, Dr. Robinson?

A. 1306 Dulaney Valley Road, Baltimore 4, Maryland. [95]

Q. And when, Dr. Robinson, did you first move to the State of Maryland?

A. In June of 1953.

Q. Are you married, Dr. Robinson?

A. Yes.

(Testimony of Miles H. Robinson.)

Q. And do you have a family? A. Yes.

Q. How many children do you have?

A. Three.

Q. Those are all boys, are they?

A. Yes, all boys.

Q. And prior to moving to Baltimore, Maryland, where did you reside, Dr. Robinson?

A. In Walla Walla, Washington.

Q. You are a physician, are you not?

A. Yes.

Q. And in what states are you licensed as a physician? A. In Washington and Maryland.

Q. When, Doctor, were you first licensed to practice medicine? A. January 15, 1941.

Q. And at all times since then, have you held a valid license to practice medicine? A. Yes.

Q. Where was your home, Dr. Robinson, prior to the time you [96] went to college?

A. Swarthmore, Pennsylvania.

Q. And did you receive your preliminary education in Swarthmore? A. Yes, I did.

Q. At what schools?

A. The public school in Swarthmore, one year in the preparatory school in Swarthmore, and from there I went to Phillips-Exeter Academy in New Hampshire.

Q. Did you complete your secondary education there?

A. No, I changed to George School for my last year, which is a sort of preparatory school for Swarthmore College.

(Testimony of Miles H. Robinson.)

Q. And when did you enter college?

A. 1930.

Q. And where was that, Doctor?

A. Swarthmore College.

Q. And did you complete your education there and obtain a degree?      A. Yes, I did.

Q. And when was that?      A. 1934.

Q. What degree did you receive?

A. B.A., I believe.

Q. And from there did you go to medical school?

A. Yes, I went to the University of Pennsylvania Medical [97] School in 1934.

Q. You commenced there in 1934?      A. Yes.

Q. During the time you spent in medical school, did you do any particular special study?

A. No, I wouldn't say so, no, it was just the regular course.

Q. And when did you graduate, Dr. Robinson, from the University of Pennsylvania Medical School?      A. 1938.

Q. And you received a degree from the University of Pennsylvania?      A. Yes. M.D.

Q. And upon your graduation, Dr. Robinson, where did you then go?

A. I went into the Pennsylvania Hospital as an intern in Philadelphia in 1938.

Q. And how long did you remain at that hospital as an intern?

A. Approximately 15 months.

Q. So that you finished there, when was it, some time in 1941?      A. Yes. Let's see—no, in 1940.



(Testimony of Miles H. Robinson.)

Q. 1940. When along during this period were you married, Dr. Robinson? [98]

A. I was married in 1934.

Q. Upon the completion of your internship in the hospital in Philadelphia, did you then commence to go into private practice? A. Yes, I did.

Q. And where did you go?

A. I came to Pasco, Washington.

Q. How did you happen to come to Pasco, Washington?

A. Well, my grandfather had come to New Mexico and I had visited out there and I had always wanted to come West, and I had a rather severe time with a mastoid condition and we looked at the record of the climate in different parts of the West and found that Pasco had the lowest rainfall of any place that we knew of, had seven inches of rainfall, so that was the primary reason that we came to Pasco. It was good for mastoid conditions.

Q. Did you have children at that time?

A. Yes, two children.

Q. Then when you arrived in Pasco, Dr. Robinson, did you then proceed to engage in the practice of medicine? A. Yes, right away.

Q. With whom?

A. I associated myself with the Pasco Clinic, which was run by Dr. Backmann and Dr. Greenwell.

Q. And this was your first year after your internship, was [99] it? A. Yes.

(Testimony of Miles H. Robinson.)

Q. How long did you remain in Pasco, Washington?

A. Well, I was there about five and a half months in practice, but I didn't get entirely over the mastoid difficulty and the sore throats that went with it and it seemed advisable to take off a little time and rest up and try to recover.

Q. Did that condition interfere with your ability to practice?

A. Yes, it did. I might say that winters in Philadelphia are very bad and it was before the days of sulfa and penicillin and we were very heavily exposed to a lot of infections and many of the interns, their health broke down, and I really hadn't recovered from the internship by the time I got to Pasco.

Q. Did this mastoid condition first arise with you during your period in Philadelphia?

A. Yes, it did.

Q. Well, then, at the time this began to interfere with your practice, what did you then do, Dr. Robinson?

A. Well, we came up to Walla Walla and bought a little place out on the outskirts of Walla Walla and I spent a year there.

Q. What sort of a place did you purchase there, Doctor? [100]

A. Well, it is what you might call a miniature farm, a little house and a few acres there, and I spent a lot of time outdoors and quite a lot of time

(Testimony of Miles H. Robinson.)

doing research of a medical nature that I was very interested in.

Q. Did your health improve during your period of time on this small farm, as you call it?

A. Yes, it picked up right away and then I was well enough to have my tonsils out, which were taken out by Dr. Rooks here in Walla Walla, and since that time I really have not had any trouble.

Q. When then, Dr. Robinson, did you first resume the practice of medicine after this period of time?

A. Well, from Walla Walla, I went into teaching in medical schools back East until the war was over.

Q. Oh, you went East from Walla Walla?

A. Yes. The thought was that it might be that medical practice was a little too strenuous for me with my particular health, and I thought that it might be well to go into research and teaching, which in any case is a good thing to do for a period.

Q. And where did you go, Dr. Robinson, to teach?

A. I went to Vanderbilt Medical School in Nashville, Tennessee.

Q. And when did you go there?

A. 1942. [101]

Q. What was your capacity on the faculty at Vanderbilt Medical School?

A. I started out as a research assistant in pharmacology and then the next year I was appointed

(Testimony of Miles H. Robinson.)

instructor in physiology and taught three sessions in that subject, which made, I think, about three or four years in Vanderbilt. We taught all the way around the year during the war, there were no vacations, and I think we taught three full school years in two calendar years.

Q. That was during 1942, '43 and '44, was it, approximately? A. Yes; and '45, also, I think.

Q. You were there also in '45?

A. I think so.

Q. Where did you go from Vanderbilt University?

A. I was offered a job as instructor in pharmacology at the University of Pennsylvania in Philadelphia, where I had gone to medical school, and that was a better job so I went there.

Q. And when did you go to the University of Pennsylvania? A. 1945, I think.

Q. And how long did you remain there, Doctor?

A. I was there one year, until 1946.

Q. During this period of time, Dr. Robinson, had you done research in the field of medicine?

A. Yes; I had. [102]

Q. In what particular field were you into at that time? A. In physiology and pharmacology.

Q. And did you write papers which were submitted to various medical journals?

A. Yes; I did. Altogether in the two schools, I worked on four different research projects, three of them which were entirely my own, and published

(Testimony of Miles H. Robinson.)

four papers which were published in the best journals in their field.

Q. While we are looking for some of these exhibits, Doctor, when did you leave the University of Pennsylvania as an instructor?

A. In 1946, I think it was.

Q. And where did you go? Well, before that I will show you these.

Now, directing your attention, Doctor, to Plaintiff's Exhibit No. 301 for identification, would you state what that document is?

A. Well, that is a copy of my paper published from work in Vanderbilt on the effect of infection rates on the anesthesia in experimental animals.

Q. Is that published as an individual paper?

A. Yes; that is.

Q. And by whom was that published?

A. Well, that is published by the Journal of Pharmacology and Experimental Therapeutics in 1945. [103]

Q. Well, then, showing you, Dr. Robinson, Plaintiff's Exhibit No. 307 for identification, will you state what that document is?

A. Well, that is a paper on the deterioration of pentathol, which is the commonest anesthetic used intravenously, which was published in Anestheology from work done at the University of Pennsylvania.

Q. And also showing you Plaintiff's Exhibit No. 308 for identification, I will ask you to state, first of all, what that document is?

A. This is a copy of an issue of the American



(Testimony of Miles H. Robinson.)

Journal of Physiology and it contains the paper by Dr. King and myself on the nervous mechanism of the intestinal lining.

Q. This document was published by the American Physiological Society?

A. I think it is called the American Journal of Physiology, is the publishing name.

Q. Well, then, showing you, Doctor, Plaintiff's Exhibit No. 309 for identification, will you state, first of all, what that document is?

A. Well, that is a copy of an issue of the Journal of Laboratory and Clinical Medicine and contains the first paper that I published on a little machine I invented for injecting experimental animals.

Q. Were these various articles written by yourself [104] individually or in collaboration with another?

A. They were all written exclusively by myself except for the one article by Dr. King and myself and we wrote that together.

Mr. McNichols: The plaintiff will offer in evidence Plaintiff's Exhibits 307, 308, 309 and 310 for the purpose of whatever effect they may have on establishing the plaintiff in his proper environment and background.

Mr. Kimball: No objection.

The Court: Does that go for all the defendants?

Mr. Smith: Yes, your Honor.

The Court: All right, they will be admitted, then, 307 to——

The Clerk: 310.

(Testimony of Miles H. Robinson.)

The Court: 310, inclusive, isn't it?

The Clerk: Yes, sir.

(Whereupon, the said articles were admitted in evidence as Plaintiff's Exhibits 307 to 310, inclusive.)

Q. (By Mr. McNichols): Now, Dr. Robinson, after you left the University of Pennsylvania, what did you next do then with respect to the practice of medicine? I believe you were in 1946.

A. Well, I was interested in all the different fields of [105] medicine and I was fortunately able to explore a number of them and I became very interested in different kinds of health centers, which I felt might answer some of the medical problems that we had, so I spent a year traveling around to Boston and also in New York and in England across the ocean.

Q. How long were you in England?

A. I was only there about three weeks altogether.

Q. Did you go there for the specific purpose of your study of medicine?

A. Yes; I did. There was a world famous health center in England that I had read a great deal about called Peckham Health Center, and I went over there to study it and make a report on it for people in this country who were interested in it.

Q. Then, Dr. Robinson, when did you again return to the City of Walla Walla? A. 1948.

Q. Did you move your family out here at that time? A. Yes.

(Testimony of Miles H. Robinson.)

Q. And did you come here for the purpose of establishing a medical practice?

A. Yes; I did. I felt by that time that I had had a lot of experience in research, in teaching, and in health centers and I had acquired some knowledge in that field, [106] and I could see exactly what I wanted to do in the practice of medicine.

Q. Where did you establish your office in Walla Walla when you returned?

A. I established my office in our home at 345 East Birch Street.

Q. Had you purchased that house, Dr. Robinson?

A. Yes; we did. We looked all over the city and were unable to find any office space downtown and I thought it would be good to start out, as many people have in the past, with an office in our home. We were unable to rent anything so I bought the house there and built on a small addition for an office.

Q. And then you commenced the practice of medicine in Walla Walla at that time? A. Yes.

Q. Did you engage in general practice, Doctor, or did you restrict your practice?

A. Well, there are two interpretations of the word "general practice." In the smaller communities, like Walla Walla, it tends to mean that the doctor does practically every kind of medicine and surgery. In larger communities, it means that you do most every kind of medical work except surgery and obstetrics, and I was in the latter class. [107]

Q. Why didn't you do surgery, Dr. Robinson?

(Testimony of Miles H. Robinson.)

A. The reason I didn't do surgery is I couldn't stand on my feet that long.

Q. Physical difficulty?

A. I had that trouble in the hospital, I just couldn't stand three hours in one place. It made some kind of difficulty with my back, I don't know what.

Q. Well, then, how long did you practice at 345 East Birch Street?

A. Well, I opened my office there in I think it was about October of 1948 and I was there until February 1st, approximately, of 1950.

Q. During that period, did you join the Walla Walla Valley Medical Society?

A. Yes; as soon as I came to Walla Walla, I applied to the society and there is a six months' waiting period before you can actually be taken in, and I was advised, I think by Dr. Smeltzer, that during that six months' period, I might just as well go fishing because you couldn't have any hospital privileges, but what I did was I just did what I could in my little office there until I got in the society and had hospital privileges.

Q. You didn't have hospital privileges during your first six months here, is that right?

A. Yes; that's right, because the hospital privileges depend [108] upon membership in the medical society and the medical society requires that you wait six months while they more or less look you over and decide whether they will take you in or not.



(Testimony of Miles H. Robinson.)

Q. Well, did you also, Dr. Robinson, join the Walla Walla Valley Medical Service Corporation, which has been referred to here as the bureau?

A. Yes; I joined the bureau quite a bit later. I got——

Q. You didn't join at the same time you joined the society?

A. No, I did not, I held off from the bureau. I didn't—I was very dubious about the nature of it, it was a brand new idea to me. I must have been in the society, I think, at least six months before I joined the bureau.

Q. Then you practiced at the Birch Street house until February of 1950, is that correct?

A. Yes.

Q. How did your practice grow after you started?

A. It grew very well. I had a few patients right away and it grew steadily right up until the time that I moved into Dr. Campbell's office.

Q. During this period of time, you, of course, obtained your hospital privileges? A. Oh, yes.

Q. Did your practice grow additionally after you gained hospital privileges? [265]

A. Oh, yes; very much so.

Q. And then when you ceased practicing at the Birch Street address, where did you then go, Dr. Robinson? Where did you then set up your office?

A. What was that question?

Q. I will rephrase the question.

A. I just missed it.

Q. You testified, I believe, that you practiced



(Testimony of Miles H. Robinson.)

medicine at the Birch Street address until the 1st of February, 1950. From the 1st of February, 1950, where did you practice?

A. Oh, I moved in Dr. Campbell's office at 200 Drumheller Building downtown here.

Q. Did you at that time enter into an agreement with Dr. Campbell? A. Yes, I did.

Q. Now, would you just state in your own terms what the transaction was between yourself and Dr. Campbell.

A. Well, Dr. Campbell offered me his practice and I purchased his equipment and good will, I suppose you would call it, and he agreed to introduce me to all of his patients, work with me for about a month, and to turn the practice over to me, as far as he was able, and in return for which I would pay him \$3,000.00.

Q. Where was this office of Dr. Campbell's located? [266]

A. Well, that was on the second floor near the elevator in the Drumheller Building.

Q. In downtown Walla Walla? A. Yes.

Q. Was that a good location for a medical practice? A. It was one of the best.

Q. How long had Dr. Campbell been practicing here in Walla Walla?

A. I think it was 33 years, and he had had that particular office for about 25 years, so that a great many people were accustomed to going to that very place, which is well known to be an important factor in any doctor setting up a practice.

(Testimony of Miles H. Robinson.)

Q. Was Dr. Campbell an elderly man at this time?           A. Yes, he was.

Q. He was turning his practice over to you and, to the best of your knowledge, what was he going to do?

A. He was going to retire and move to the Coast.

Q. Well, now, did he in fact work with you then for a period of time after you came into the office?

A. Yes, he worked for a month with me and it was part of his plan to turn over all the receipts, that is, all the income, that he got during that month to me, and, as I recall the receipts during that time were about \$3,000.00, or perhaps more, so what he did really, in effect, was [267] to give me the practice.

Q. How long had you known Dr. Campbell?

A. I had met Dr. Campbell when I was in Pasco in 1941.

Q. Had you corresponded with him during the years?

A. Yes, I had off and on. I valued his friendship very much.

Q. Did he appear to reciprocate that feeling?

A. Yes, he did.

Q. Well, you considered yourself to be a good friend of Dr. Campbell?           A. Yes, I did.

Q. Did he during that one month period after you had moved into his office introduce you to his patients as they would come in?

(Testimony of Miles H. Robinson.)

A. Yes, he introduced me to a great many people, about as many as I could meet during the day every day.

Q. And did he observe you as you treated those patients? A. Yes, he did.

Q. And then after the one month, approximately one month, had expired, then Dr. Campbell left, did he?

A. I think actually it was five weeks. He was sick for a few days and absolutely insisted that he was going to work there four months—or four weeks or a full four weeks, so he went ahead and did that. It totaled five altogether. [268]

Q. Now, Dr. Robinson, directing your attention to Plaintiff's Exhibit No. 277 for identification, will you examine that document and tell us what it purports to be?

A. Well, that is the agreement between Dr. Campbell and myself which a local attorney drew up, and it covers the points that I mentioned, although I see here there is——

The Court: I don't believe this calls for contents of the document, merely a description of it, isn't it?

Mr. McNichols: That's right, your Honor.

The Court: That is what counsel has in mind, I think.

Q. (By Mr. McNichols): Just calling your attention to the last page, Dr. Robinson, does your signature appear thereon? A. Yes.

(Testimony of Miles H. Robinson.)

Q. And that of Dr. Campbell's? A. Yes.

Q. Is that his signature? A. That is.

Mr. McNichols: I will offer Plaintiff's Exhibit 277 for identification in evidence.

Mr. Kimball: No objection here.

Mr. Rosling: If counsel thinks it is material, I have no objection. [269]

The Court: It will be admitted, then.

(Whereupon, the said agreement was admitted in evidence as Plaintiff's Exhibit No. 277.)

Q. (By Mr. McNichols): Would you, Dr. Robinson, briefly describe the office which you took over from Dr. Campbell?

A. It was a very large office as medical offices go, with four or five consulting rooms, a large waiting room, and a very unusual laboratory, large and extremely well equipped. I think we had something like 4,200 square feet of office space.

Mr. McNichols: I might make a statement, your Honor, apparently several photographs and a scale of the chart of the office were marked as one exhibit as all being contained in one envelope. I have no objection to presenting them in that way unless counsel would rather separate them?

Mr. Kimball: No.

The Court: Well, I think the Clerk should either clip them together or else mark them 277-A, B, C and D, and so on, because it makes a better record that way.

(Testimony of Miles H. Robinson.)

Mr. McNichols: There are three photographs and a drawing in the envelope.

The Court: Those are all marked 277? [270]

Mr. Tuttle: 278, isn't it?

The Court: Oh, 277 is admitted, this is 278.

Mr. McNichols: Yes, your Honor.

The Clerk: 278.

Mr. McNichols: 278 is the mark on the envelope, but perhaps——

The Court: I suggest that you clip them together and then mark them successively A, B, C and D.

Q. (By Mr. McNichols): Well, then, Dr. Robinson, we will continue. When was it then that you joined the Walla Walla Valley Medical Service Corporation, which we will refer to as the bureau, approximately?

A. That was February 1, 1949.

Q. That was back in '49? A. Yes.

Q. And why did you join the medical bureau?

A. Well, there were a number of reasons. Dr. Campbell urged me very strongly to join. He said that there was a great change that was taking place in the practice of medicine and that it looked as if the medical business was going to be dominated by the bureau. I could see that unless I joined the bureau, I would never get any of the poorer people in town as patients, and since time began when any doctor starts up in business, he is new in town, and he depends very heavily on the poorer [271] people of town who can't afford to go to the more expensive and busy doctors and they come to the



(Testimony of Miles H. Robinson.)

new doctor because he is willing to work for less money and he is anxious to build up his reputation, and that is about the only way he can build it up.

Q. Were you familiar with the details of the operation of the bureau prior to the time you joined?

A. No, I was not. All I could see was that I could never get any of those people unless I belonged to the bureau.

Q. Well, back now, Dr. Robinson to the——

The Court: They seem to pertain to different things there.

Mr. McNichols: Yes, they do, your Honor. In fact, I was primarily concerned at this time with offering 278.

The Court: They should have been marked separately in the first place, because the one is of the office and the others are different residence dwellings.

Mr. McNichols: We could, I suppose, segregate them and have them 278, 278-A, B and C.

The Court: Yes. all right.

Q. (By Mr. McNichols): Well, now, Dr. Robinson, directing your attention to Plaintiff's Exhibit 278 for identification, would you examine that and state what it is?

A. That is a photostatic copy of an outline or drawing of the offices I had in the Drumbheller Building, the [272] original drawing Mr. Drumbheller gave me some weeks ago, showing the space I had there and the design is correct and——

(Testimony of Miles H. Robinson.)

The Court: I think you should just tell us what it is and then we will see whether there is any objection to it. It may not be necessary to make such an elaborate description.

Q. (By Mr. McNichols): Does that truly represent the floor plan of the office that you took over from Dr. Campbell? A. Yes.

Mr. McNichols: I will offer Plaintiff's Exhibit for identification 278.

The Court: Any objection, counsel?

Mr. Tuttle: No.

The Court: It will be admitted, then.

(Whereupon, the said floor plan was admitted in evidence as Plaintiff's Exhibit 278.)

Q. (By Mr. McNichols): Referring now to Plaintiff's Exhibit 278-C, Dr. Robinson, just state briefly what that photograph purports to show.

A. Well, that is the picture of the house we bought, showing the office where I started out.

Q. This was the office you referred to on what street? A. 345 Birch Street. [273]

Q. And directing you to the picture, will you indicate orally where the office entrance appears on that building?

A. It is the door over on the left side.

The Court: On the left side as you face it? Yes, I see.

A. Yes.

Mr. McNichols: I will offer Plaintiff's Exhibit 278-C into evidence.

Mr. Kimball: No objection.

(Testimony of Miles H. Robinson.)

The Court: It will be admitted.

(Whereupon, the said photograph was admitted in evidence as Plaintiff's Exhibit 278-C.)

Q. (By Mr. McNichols): Well, then, Dr. Robinson, after you commenced practice in Dr. Campbell's office in the Drumheller Building, will you state briefly how your practice of medicine progressed?

A. Well, the business increased markedly as soon as I took over Dr. Campbell's practice. He left about March the 5th and I had a very large business until summer came, and then there was the usual slump when nobody gets sick, there is some decrease in the business for a couple of months in the summer, and then all this trouble started in the fall. [274]

Q. Generally, did you keep busy in your office from the time you started practicing in the Drumheller Building?

A. Yes, I was busy all the time.

Q. Did you gradually acquire additional patients?

A. Yes, I acquired a great many of his patients.

Mr. Sembower: Your Honor, pursuant to our discussion the other day, Mr. McNichols and I have, because of the length of this examination, divided areas of this between us and, if there is no objection, we have now reached a segment and I will continue the examination for a spell.

The Court: Very well, that is all right, you may proceed.

(Testimony of Miles H. Robinson.)

Q. (By Mr. Sembower): Dr. Robinson, were there any other reasons why you joined the bureau other than those which you have already stated?

A. Well, I was urged to join the bureau by the men who were already in it, and particularly by Mr. Fullerton, the manager of the bureau. He told me that they were anxious to have everybody in the bureau so it would not look like a monopoly and——

Q. When did you have that conversation with Mr. Fullerton, Dr. Robinson?

A. Well, that was off and on for several months before I joined in February of '49. [275]

Q. There were several conversations?

A. Oh, yes.

Q. Where did these conversations take place?

A. Well, both in my office and up in his office. The bureau was in the same building on the floor above.

Q. And you don't remember the exact dates when those occurred?

A. No, I don't.

Q. Were there any other persons present when you had these conversations with Mr. Fullerton?

A. I don't believe so. We were just in each other's offices and there would be people coming and going.

Q. When did you join the bureau?

A. In February of '49, I think.

Q. In addition to your practice at the office——

The Court: Pardon me, am I correct in getting that date, February of '49?

(Testimony of Miles H. Robinson.)

Mr. Sembower: February 1st, '49, your Honor. That is the date.

Mr. Rosling: That is correct, your Honor.

The Court: That is before he moved into Dr. Campbell's office, then?

Mr. Rosling: One year.

Mr. Sembower: That is correct.

The Court: Did he testify that Dr. Campbell urged [276] him to join the Bureau?

Mr. Sembower: That is correct, yes.

The Court: You were already in it when you went in with Dr. Campbell, weren't you? You mean he had talked to you before you went in with him?

A. Yes, I talked with him, oh, I would say, frequently ever since I came to Walla Walla, because he was advising me about my practice, he was sending me patients, and we were close personal friends and we visited back and forth a great deal.

If I may say so, another reason I joined the Bureau was that Dr. Campbell pointed out that it was the best business in town, the best medical business. He said that "You were guaranteed to be paid, to get your fees, and that what used to be the poorest paying medical business had now become the best paying medical business because of all the money that came from the state and was distributed through the bureau on indigent and old age persons."

Q. (By Mr. Sembower): To clear up the matter of a moment ago, when did you first meet Dr. Campbell, Dr. Robinson?



(Testimony of Miles H. Robinson.)

A. I think it was in 1941 in Pasco.

Q. And when did you see him after that?

A. Well, we saw him off and on in 1942 and I was up here out on this little ranch, and then we did not see him [277] again until I came to Walla Walla in '48, as far as I recall.

Q. Dr. Robinson, what other medical practice did you engage in in the community in addition to your office practice?

A. Well, before I went in with Dr. Campbell, I was offered the position of penitentiary physician out at the state penitentiary. I should say there were two of us out there and we divided the work.

\* \* \*

A. May I say I failed to mention before, your Honor, that I had worked at the penitentiary? [278]

The Court: I see. I thought you did mention the penitentiary in some connection, but go ahead, that is all right.

Mr. Sembower: Thank you.

Q. Dr. Robinson, were you accepted favorably by the members of the medical profession so far as you knew in Walla Walla? A. Yes, I was.

Q. Did you see any particular evidence of that?

A. Well, yes, I would say so. The doctors were generally friendly.

Q. Can you name any specific example?

A. Well, they sent me patients and I sent them patients.

Q. Was there any other example of their acceptance? Were there any plans, Dr. Robinson, for

(Testimony of Miles H. Robinson.)

operated from the standpoint of the individual practicing physician who was an active member of it?

A. Well, the way it began is, the way it works, it has several departments. The biggest department in the bureau is that which gets money from the State of [281] Washington to take care of poor people and old age pensioners. In 1950, I know that amounted to about \$200,000.00 a year and that was the biggest piece of business the bureau handled.

The second thing the bureau did was it had contracts with many of the businesses and industries in Walla Walla to take care of anything that might happen to the employees of those businesses, so they had the canneries, they had the pea operations.

Q. Now, when you say they had the canneries, the pea operations, what do you mean by that, Dr. Robinson?

A. Well, I mean that any of those workers could not come or would not come to a man, to a doctor, who was not a member of the bureau, for the simple reason if I was not a member of the bureau, if he came to me, he would have to pay me, but if he goes to a member of the bureau, his bill is already paid by a contract between the bureau and the cannery.

The Court: It is time for a recess. Court will recess for ten minutes.

(Whereupon, a short recess was taken.)

Q. (By Mr. Sembower): Dr. Robinson, you were explaining to us the operation of the bureau as it affected the individual practitioner who is a

(Testimony of Miles H. Robinson.)

member of it. What was the function of the screener? [282]

A. Well, he was one of the doctors appointed to supervise everything that was done, every medical treatment that was given.

Q. Who appointed him, if you know?

A. I don't know exactly. I never did know how they selected him, but he was a man that would be far away from your own patient, he would never see the sick person you were working on, and you would want to do—I mean I would want to do what I think is right for a patient, I would want to do what I do for my own father or my own family, and I would have to ask him whether what I did suited him, and the net result was that I felt that all the medical treatment was reduced to the dead level of what wouldn't cause any disturbance and what was approved in the old days and, consequently, if you wanted to practice a really high-class type of medicine, I felt that the screener stood in the way of that.

Q. What did he screen, Dr. Robinson?

A. Well, any medical procedure that you wanted to do on a patient, he had authority to countermand it. For example, I had a patient with a serious urinary infection and I wanted to do certain cultures of the urine and laboratory work, and he wouldn't approve it. Just from some other place far away from the patient and far away from me, he makes up his mind from the few things I tell [283] him over the phone that this can't be approved.

(Testimony of Miles H. Robinson.)

Q. What was the name of that patient, if you recall?

A. Well, the particular case I am thinking of was Mrs. Phillips, who had had a number of different diagnoses, none of which was correct, and I came along and found out what was really the matter and ran some necessary laboratory work and the bureau would not pay for it. They simply assumed that I hadn't made the correct diagnosis and they wouldn't pay for it.

Q. Dr. Robinson, I show you Plaintiff's Exhibit marked No. 9 for identification, purporting to be a letter from C. E. Fullerton, Manager, to Mrs. Mildred L. Phillips, dated August 23, 1950, and ask you if you recall seeing this before?

A. Yes, I do.

Q. When did you see it before?

A. Well, a copy of this letter was delivered to me or mailed to me by Mr. Fullerton on the date that is given there.

Q. Does this letter relate to the case which you have just been describing concerning Mrs. Phillips?

A. Yes.

Mr. Sembower: The letter states:

"May we call to your attention——"

This is addressed to Mrs. Phillips——

"——that the agreement under which you are a [284] subscriber to the Walla Walla Valley Medical Service Corporation, the period of medical surgical services is limited to six months care for any single condition. Since we have provided you six



(Testimony of Miles H. Robinson.)

months care as of July 31, 1950, for endocarditis——”

The Court: Counsel seem not to be observing here, I think I should make it clear, though, that the rule I follow here is that an exhibit may not be read until it has been admitted.

Mr. Sembower: Oh, I'm sorry, I thought I had asked for its admission. I ask that the——

The Court: That is a quite general rule, I think.

Mr. Sembower: I'm sure it is. I ask that this exhibit be admitted.

Mr. Kimball: No objection.

The Court: It will be admitted. That is No. 9, isn't it, Mr. Sembower?

Mr. Sembower: Yes.

The Clerk: No. 9.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 9.)

Mr. Sembower: Thank you, your Honor, I thought I had already asked that it be [285] admitted.

Continuing here, the Exhibit No. 9:

“The cost of further treatment for this condition will be considered your personal obligation. The coverages of the agreement other than for the above condition are still available to you.”

Q. Will you tell the Court, Dr. Robinson, in the light of your experience as a member of the bureau and your relationship as a physician to this patient, what that letter states?



(Testimony of Miles H. Robinson.)

A. Well, your Honor, it states, in substance, that my diagnosis is wrong because the bureau refuses to pay my bill and puts it off on the basis that a diagnosis by a former physician has already had all the payment that could be made on it.

Q. Was there a limit for payment which could be made for the condition of endocarditis?

A. I believe there is a six-months' limit on quite a few diseases and that was just one of them.

Q. Was that the disease which you had diagnosed Mrs. Phillips as having?

A. No, that is a diagnosis she had had for a long time, and when I took her over, I found right away that she didn't have that condition at all and I found that she had an entirely different condition that was poisoning her [286] heart, and when that infection which was poisoning her was cleared up, her heart trouble practically disappeared, so-called heart trouble.

Q. What did you diagnose her condition as being?

A. Well, she had a urinary infection. It is kind of a kidney-urinary type of thing, very common.

Q. Was that a compensable condition under the bureau?      A. Oh, yes.

Q. If you know, why did the bureau not approve the payment on the basis of your diagnosis?

A. Well, I felt that they were generally rather arbitrary in what they approved or did not approve. The screener was Dr. Pratt and he had shown some evidences of antagonism to me.

(Testimony of Miles H. Robinson.)

Q. Is that the Dr. Pratt, Dr. Robinson, who is a defendant in this action? A. Yes.

Q. Were you a member of the bureau when this letter was dispatched to Mrs. Phillips?

A. No, actually, I was not, but the service that I rendered to her was rendered when I was a member of the bureau. That letter was written six days after I resigned from the bureau, and I felt it was rather odd that right after I resigned they should send me such a letter.

Q. That is, you mean sent a letter to one of your patients? [287] A. Yes.

Q. Dr. Robinson, when did you resign from the bureau?

A. Oh, I sent in my letter of resignation on the 16th of August, just seven days before this letter was written.

The Court: May I see that?

(Exhibit handed to Court.)

Q. (By Mr. Sembower): Dr. Robinson, I show you Plaintiff's Exhibit marked for identification No. 8, which purports to be a photostatic copy of a letter from Miles H. Robinson to the Walla Walla Valley Medical Service Bureau, dated August 17, 1950, and ask if you have seen this before?

A. Yes.

Mr. Sembower: Your Honor, this is marked No. 1 so I assume there is no objection to it. I don't want to consume needless time——

(Testimony of Miles H. Robinson.)

The Court: No. 1 has been admitted.

The Clerk: It is classified as 1.

The Court: Oh. Which number is it?

The Clerk: 8.

The Court: Oh, yes, 8. I think, though, to keep the record straight, you should offer them because then we will know which ones you choose to put in. You may not want to introduce them all.

Mr. Sembower: I don't want to consume needless time. [288]

The Court: If you will state what it is, I will admit it.

Mr. Sembower: It will be unnecessary to present the No. 1's to the witness, then?

The Court: Yes. No. 8 will be admitted. If you will just state if you are offering it, then we will show of record it has been admitted.

Mr. Sembower: I offer in evidence Plaintiff's Exhibit No. 8.

The Court: It is admitted, then.

Mr. Sembower: Thank you.

Mr. Tuttle: Did you say 11?

The Court: Plaintiff's No. 8, isn't it?

The Clerk: No. 8.

The Court: Yes, Plaintiff's Exhibit No. 8.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 8.)

Q. (By Mr. Sembower): Dr. Robinson, I show you Plaintiff's Exhibit marked for identification No. 7, which purports to be a letter from Miles H. Rob-

(Testimony of Miles H. Robinson.)

inson, photostatic copy of a letter from Miles H. Robinson to Walla Walla County Welfare Department, dated August 16, 1950, and ask you if you have seen this before?      A. Yes. [289]

Mr. Sembower: I ask that Plaintiff's Exhibit No. 7 be admitted in evidence.

The Clerk: No. 7.

The Court: Yes, that is No. 2. Any objection?

Mr. Kimball: No objection.

The Court: It will be admitted, then.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 7.)

Q. (By Mr. Sembower): Dr. Robinson, Plaintiff's Exhibit No. 7, a letter to the Walla Walla County Welfare Department, will you state why you wrote that letter?

A. Well, the Welfare Department funneled the larger share of the—well, I should say this: The largest amount of money that was distributed by the bureau seemed to come through the Welfare Department. The Welfare Department certified what people in the city were eligible for free care and the bureau administered and screened all the activities of the member doctors.

Q. In withdrawing from the bureau, was it necessary for you also to withdraw from the Welfare Department?

A. Well, one does not belong to the Welfare Department. The reason I wrote the letter to the Welfare Department was merely to advise them

(Testimony of Miles H. Robinson.)

that I was withdrawing from the bureau, and I also contacted the county health [290] officer and told him that I would be glad to take care of any indigent people if I could do so without doing it through the bureau.

Q. Did you write any other communication at or about this time, Dr. Robinson, with respect to your withdrawal from the bureau?

A. Well, yes, I did. I wrote that letter of August the 11th, 1950, about five days before I resigned from the bureau.

Q. I show you, Dr. Robinson, Plaintiff's Exhibit for identification No. 5, which is a photostatic copy of a letter purporting to be addressed from Miles H. Robinson to "Dear Doctor," dated August 11, 1950, and ask you if you have seen this before?

A. Yes.

Mr. Sembower: I ask that Plaintiff's Exhibit No. 5 be admitted into evidence.

Mr. Kimball: No objection.

The Court: It will be admitted, then.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 5.)

Q. (By Mr. Sembower): To whom did you send this letter, Dr. Robinson?

A. Well, I sent that to my colleagues in the medical society, [291] the other doctors.

Q. To any other persons?

A. No, not to any other persons.

Q. When did you compose the letter?



(Testimony of Miles H. Robinson.)

A. Oh, I think it was about a week previously.

Q. Does this letter accurately reflect your viewpoints with respect to the bureau?

A. Yes, it did at that time, and it is substantially what I believe today.

The Court: I am not sure I understood the witness' answer to whom he sent the letter. To all the other doctors in Walla Walla or just the members of the bureau?

A. Well, sir, all the other doctors in Walla Walla were members of the bureau.

The Court: Oh, I see, they all belonged.

A. Yes.

The Court: Yes, I see, all right.

Q. (By Mr. Sembower): Dr. Robinson, did you receive any response from the doctors to whom you sent this letter?

A. I would like to mention first, if I could, that the reason I wrote this letter was because there was quite a lot of pressure on me not to leave the bureau and I was anxious that the other men who believed so strongly in it would not be offended, and so I thought I will put down an impartial view that I have about it and sent it [292] to my friends and acquaintances in the profession.

Q. You say, Dr. Robinson, what pressure upon you not to leave the bureau?

A. Well, Mr. Fullerton, I talked to him a number of times and he urged me not to leave the bureau. He said it was their bulwark——

(Testimony of Miles H. Robinson.)

Q. Do you remember when you had those conversations with Mr. Fullerton?

A. I remember one of them in his office upstairs.

Q. On or about what date did that occur?

A. Well, within a few weeks before I resigned.

Q. And where did the conversation take place?

A. Well, it was in the sort of anteroom of his office there.

Q. Was there anyone else present besides you and Mr. Fullerton?

A. No, just people moving back and forth in the office.

Q. What was the occasion of your visit? Did you go to his office or did he ask you to come?

A. Well, I went up that time to tell him. I thought it would be an act of consideration to let him know that I had principles on the subject and I went up voluntarily. Then he came down to my office once that I recall and discussed the matter.

Q. Well, now, on the first conversation you had with him in his office, what did you say to him and what did he say [293] to you?

A. Well, I told him substantially what is in that letter and that I felt that the bureau was really a barrier between the patient and the doctor, it was dictating what kind of medicine I could practice, and it would mean that I couldn't really give advanced type of medical service to the patient.

Q. Did you tell him that it was your view that the bureau prescribed the fees you must charge?

A. Well, yes, I had no complaint about the fees,

(Testimony of Miles H. Robinson.)

the fees were, as far as the size of them goes, they were the same fees that I charged myself, but suppose I had a patient with a nutritional difficulty which requires high doses of vitamins. Well, you can't get vitamins on the bureau and—at least, you couldn't at that time. You could take the man's appendix out if you had a shadow of a reason for taking his appendix out, but if you wanted to give him really what I considered high-class medicine, the bureau often couldn't pay for it.

Q. Did you tell him that it was your view that the bureau prescribed the number of visits you should make upon a patient or they should make upon you?

A. Well, they had very elaborate regulations about the number of visits that controlled the whole situation.

Q. What were those regulations, if you [294] recall?

A. Well, I just couldn't tell you exactly at this minute. The bureau regulations changed every month and they make a stack three inches or two inches high, I would say.

Q. How were the regulations changed, Dr. Robinson?

A. Well, there was a vast amount of paper work involved and——

Q. Maybe you didn't understand my question. I will rephrase it.

Were the changes in the regulations made at bureau meetings? Where were the changes made?

A. Well, the large majority of them were made

(Testimony of Miles H. Robinson.)

in bureau meetings and some of them were handed down as directives from the state bureau.

Q. When were bureau meetings held?

A. Well, we had almost more bureau meetings than we had society meetings. They were at least every month, usually jointly with the society meetings.

Q. And how were the changes in the regulations of the bureau made at those meetings?

A. Well, they were made by vote. There would be a motion made, passed, and usually made by vote, but some of them were made in trustees meetings and we knew nothing, the general rank and file knew nothing about them.

Q. Do you remember who in the bureau meetings were active in changing the regulations from time to time? [295]

A. Well, the men who are defendants in this lawsuit were the men who were practically conducting all the activities of the bureau. Their names always came up when a motion was made or passed, they were very active in the bureau.

Mr. Sembower: I will pass that for the present until he can locate that exhibit, rather than take the time of the Court.

Q. Well, Dr. Robinson, what did Mr. Fullerton say to you, if you recall, during the conversation?

A. He said that, "We would like to have every doctor in town a member of the bureau. Otherwise, it would look like a monopoly if you are on the outside and everyone else is a member." And I ad-



(Testimony of Miles H. Robinson.)

mitted that it probably would be a monopolistic, but it didn't worry me; that I felt that some one had to make a protest against the policies and the practices of this kind of medicine.

Q. Then you testified a moment ago that Mr. Fullerton called at your office. When and where did that take place?

A. I don't remember exactly. He was down in my office several times handing me a bulletin or a notice of a bureau meeting, something of that kind.

Q. On any of these occasions, did he discuss with you your intentions of withdrawing from the bureau?

A. Yes, I distinctly remember talking to him twice about it. [296] I was talking to various people about it. I had quite a talk with Dr. Pratt about it.

Q. That is, the Dr. Pratt who is a defendant in this case?

A. Yes.

Q. Where did that conversation take place?

A. Well, I went into his office and took with me a rough draft of this letter of August 11th.

Q. And about when did that occur?

A. It was five or six days before I sent the letter out.

Q. Was anyone else present?

A. No, we just talked in his inner office.

Q. What did you say to Dr. Pratt and what did he say to you?

A. Well, he read the letter and he thought it was a very fine letter. He said, "I think that you



(Testimony of Miles H. Robinson.)

ought to send this in to Northwest Medicine and have them publish it," which pleased me very much. And then he said, "Yes, it is true that the medicine that we practice under the bureau tends to be second rate, but," he said, "the state has got all this money to put out on this program, and," I distinctly remember what he said, he said, "If we don't take it, they will just throw it in the ditch." And the reason I remember that, it was just an odd expression, but it certainly—I think what he meant was that politicians or somebody else would get this money. [297]

Then he said, he said, "I would like to show this letter to Mr. Fullerton," and I believe the way it worked out, he said, "Why don't you show it to him?" and whether I did or not I really don't remember.

Q. Did you have conversations with anyone else before you sent this letter out with reference to withdrawing from the bureau?

A. I don't recall any at the time.

Q. Was your resignation from the bureau accepted?

A. Well, that was an odd thing to me. I sent in my letter on the 16th of August, to me just a routine resignation. I really didn't think anything would come of it, I would just go back to what I was before I was on the bureau, but nothing happened right off. Then I believe I had a talk with Mr. Fullerton. I am not sure, but my recollection is that he came down and inquired rather deli-

(Testimony of Miles H. Robinson.)

cately around the subject as to my withdrawing from the bureau, but nothing came of the conversation. Then the next thing that I knew was when Fullerton delivered to me a copy of the Edwards' complaint.

Q. When you refer to the Edwards' complaint, what was that, Dr. Robinson?

A. Well, I had had, I think it is about seven members of the Edwards and Brooks families as patients for six or eight months or so, and back in June I was called on the [298] telephone by a lady, I don't remember whether it was Mrs. Edwards or some woman relative of hers, and the lady said, "Little Noline Edwards has swallowed a box of candy sulfa pills and what shall we do?" Well, I told her right away that that was an important matter, it might be serious, and I said the important thing is to get the stuff out of the child promptly, to make the child vomit, and the reason for that is that sulfa, while a common drug, it can be a deadly drug and especially a large dose in a small child because the drug crystalizes in the urine into large crystals and blocks the kidney, and there have been quite a few deaths from sulfa in that way.

So I told the mother what to do, I said, "First, put your finger—" I thought it was the mother, whatever woman it was—I said, "Put your finger down the child's throat and make the child vomit. If you can, that is the simplest thing, get it all out. And if that doesn't work, go get some mustard in

(Testimony of Miles H. Robinson.)

the kitchen and mix that up with water and make the child swallow it. That will make the child vomit." And I said, "If that doesn't work, call me right back and we will have to take the child to the hospital and pump the stomach."

So she hung up and that is all that happened for the time being. Well, I was rather [299] concerned——

Q. Do you remember, Dr. Robinson, approximately what time in the afternoon that call came in?      A. I have no——

Q. If you remember?

A. I have no idea what time of day that was, except it must have been fairly early in the day, in the afternoon, because I had the case on my mind a good part of the afternoon when I had my office hours and couldn't leave the office.

Q. Was there any conversation between you and the caller with respect to a prescription?

A. I think that there was a conversation there about the prescription, to the effect that what I told the mother was, or the woman, that if the child did not vomit, I might send a prescription. I didn't have it clearly in my mind just what I would do if the child did not vomit, because it depended on what she would report back to me as to how much the child vomited and how things seemed to be going. But it was distinctly understood that if the child vomited, there was nothing else to worry about and no prescription, no trip to the hospital, nothing.

(Testimony of Miles H. Robinson.)

Q. What happened next, Dr. Robinson with respect to this particular telephone call?

A. Well, an hour or two went by and I didn't hear from the family and that worried me some, thinking of these [300] crystals of sulfa that might be forming in the kidneys, so I made an effort to reach the family by telephone and I called two or three numbers of the Edwards' and Brooks' homes. I never knew just where any member of the family was. I think the child was at the mother's home on this occasion, but I called around the different numbers I had.

Q. You mean at the child's own mother's home?

A. No, I mean Mrs. Brooks, the mother.

Q. When you speak of the Brooks-Edwards family, will you tell the court of what that family consisted, if you know?

A. Well, there was Mr. and Mrs. Brooks, who had been my patients, and then there was the Edwards family.

Q. Now, would that be Tom Brooks, the defendant?

A. Yes.

Q. One of the defendants in this action?

A. Yes.

Q. And his wife?

A. His wife, Grace Brooks. Then the Edwards family, of which I had had as patients Mrs. Edwards and the little child, Noline, I had seen once or twice. Then there was another daughter of Tom Brooks, who was Mrs. Lepiane, and I had had quite a bit to do with that family, I remember, be-



(Testimony of Miles H. Robinson.)

cause at one time the bill amounted to \$40.00 on the [301] Lepiane family, which, incidentally, was very difficult to get paid, and I mention that because when I eventually put down a charge of a dollar and a half for all the phone calls that I had tried to make and the one that I had made and the half an hour or so of time that I had spent worrying about the case and thinking about it, and so on, I very seldom charge for phone calls, I don't suppose I have made more than a dozen such charges in Walla Walla—well, might be two dozen in the five years that I was here—but I had remembered about having quite a lot of trouble getting paid with the Lepiane family and I just felt that I shouldn't look like I was going to handle a fairly serious problem like this and not put down any charge at all.

Q. Where did you put down your charges, Dr. Robinson? Where did you customarily enter your charges for a patient's services?

A. Well, they were entered on what we call the day sheet, which showed all the work done in one day, which my secretary transferred to a ledger at her leisure on the following day.

Q. And you did make a entry in connection with this particular service?

A. Well, I am sure I did because it shows up on the ledger. Well, I imagine it will show up on my day sheet which [302] has been put in among these exhibits.

Q. After you attempted to get in touch with



(Testimony of Miles H. Robinson.)

whoever was in charge of this child, what happened further, if anything?

A. My recollection is that I finally reached somebody in the family and they said the child had vomited, and I said, "Fine. Now give her some epsom salts." And the rationale was entirely simple. We had got everything of this poisonous substance up that we could get up, and the next thing to do is to send whatever is left on down and through, and that way you have the least possible absorption of the sulfa drug.

Q. What, if anything, happened with respect to this matter after that, if you recall?

A. Yes. Nothing else happened in connection with it until Mr. Fullerton——

Q. Now, just a moment. Do you remember approximately the date when this occurred?

A. I looked it up in the records a week or two ago and it seems to have happened back in June of 1950. That is what the records show.

Q. Do you remember the approximate date?

A. I don't exactly.

Q. Would June 6th sound——

A. Well, it was around the early part of June. I think it [303] was June 6th or June 9th, but the records will show that.

Q. Did you render a bill for the services which you had rendered in this connection?

A. Yes, we sent out bills every month. My Secretary made out bills and I am confident that whatever the bill was for the Edwards at that time, it

(Testimony of Miles H. Robinson.)

was sent out on the 1st of July. And they are sent out regularly every month. If they are not paid, we just send them out again.

Q. Did you receive a payment of that charge?

A. My recollection is that they paid on the bill one or more times since this trouble with the child.

Q. Did you render any additional bills with respect to this dollar and a half, if you recall, besides the July 1st bill?

A. Well, I am certain it went out on August the 1st and the records will probably show that. And it must have gone out again on September the 1st, because when I first heard about it, the bill had still not been paid, the dollar and a half, had not been paid, and I heard about it on the 30th of September.

Q. When did you next hear about this incident?

A. Well, from June, when it happened, until the 30th of September, I heard absolutely nothing. I had been——

Q. What happened on the 30th of September, if you recall? [304]

A. I was going to say I was seeing Mrs. Brooks right along and I think one or two other members of the family and there was no complaint about being anything wrong with my treatment of this child.

Then on the 30th of September at approximately 11:30 in the morning—the reason I remember it, it was Saturday—and Mr. Fullerton came in the office and in a rather evasive and what I felt was sort

(Testimony of Miles H. Robinson.)

of a shifty way, he dropped this carbon copy of this letter on my desk and beat a hasty retreat, and I thought at first, well, it is nearly quitting time, Saturday noon, and he is in a hurry. Then I picked the letter up and it was a carbon copy of this official letter from the society to Mrs. Edwards telling them not to pay my dollar and a half bill.

Q. Dr. Robinson, I show you Plaintiff's Exhibit marked for identification No. 14, which purports to be on the letterhead of the Walla Walla Valley Medical Service Corporation, which—I want to correct that, it is Exhibit No. 10, I have seen an old exhibit number here—which purports to be a complaint of Mrs. Noel Edwards signed by C. E. Fullerton—not signed, but bearing the name of C. E. Fullerton—and ask you if you have ever seen this before? A. Yes, I have. [305]

Mr. Sembower: I ask that Plaintiff's Exhibit No. 10 be admitted in evidence.

The Court : It will be admitted.

(Whereupon, the said complaint was admitted in evidence as Plaintiff's Exhibit No. 10.)

Q. (By Mr. Sembower): Dr. Robinson, when did you first see this purported complaint of Mrs Noel Edwards?

A. The first time that I ever saw a copy of that complaint, of that paper you have there, was when we subpoenaed it in 1953, three years after that complaint was made.

(Testimony of Miles H. Robinson.)

Q. Reading to you from the exhibit, it states:  
“Statement of Mrs. Edwards:

“That she works for a dentist in Walla Walla and her daughter is cared for by Mrs. Edwards’ sister; that on June 3, 1950, the baby swallowed a box of Ex-Lax pills.”

You testified a moment ago that you were told by the caller over the telephone that the substance swallowed was candy sulfa pills. Is your recollection clear on that point?

A. My recollection is absolutely clear. I was told that the child swallowed candy sulfa and it is impossible that I could be mistaken for the reason that I am very interested in the matter of sulfa in general and I had a very [306] special procedure for giving sulfa to all my patients whereby I gave them sodium bicarbonate along with it to change the acidity of the urine to the alkaline side so that the crystals do not form. They do not form in alkaline fluid and all the druggists in Walla Walla know that whenever I give sulfa, I have every patient get a litmus indicator by which they test the acidity of the urine every three or four hours to make certain that they get a blue test, which means that the fluid will dissolve any sulfa crystals.

So my interest in sulfa has always been very great and I think my records show that it was sulfa and I positively remember that they told me that they thought it was candy sulfa, which was a very common drug.



(Testimony of Miles H. Robinson.)

Mr. Sembower: Continuing the complaint, it states:

“The sister called Dr. Robinson on the phone for instructions and the doctor instructed her to induce vomiting either with salt water or running her finger down the baby’s throat.”

Q. Does that correspond with your recollection?

A. Well, what I probably told them was three things: To tickle the baby’s throat, which is an old fashioned but very safe and effective method; to use mustard if that didn’t work, and to use salt water if that didn’t work. [307]

And, further, as far as the Ex-Lax goes, it would have been ridiculous for me to recommend epsom salts on top of a cathartic; in other words, a cathartic on a cathartic; and I couldn’t conceivably have ordered epsom salts on top of Ex-Lax.

Mr. Sembower: Continuing the complaint, it states:

“He stated that it was serious and that he would send immediately a prescription to induce vomiting if the other methods failed. If the prescription did not work, it would be necessary to take the baby to the hospital and have the stomach pumped.”

Q. Does that correspond with your recollection of this incident?

A. Well, it doesn’t really, because I don’t believe that I would have a prescription take the place of going to the hospital. I just don’t remember any statement like that about sending a prescription.



(Testimony of Miles H. Robinson.)

Mr. Sembower: Continuing the complaint:

“The sister induced the vomiting and again called Dr. Robinson and the doctor stated: ‘Oh, dear me, I forgot all about the prescription.’ He then advised the use of epsom salts.”

Q. Does that correspond with your [308] recollection?

A. No, I never told her any such thing.

Mr. Sembower: Continuing the complaint:

“That she received a bill from the doctor for a dollar and a half, and upon inquiry of the doctor’s nurse was advised it was for the prescription. When told no prescription was sent, the doctor stated it was for the telephone call.”

Q. Does that correspond with your recollection?

A. Well, I don’t know what my secretary really told Mrs. Edwards.

Q. Did you ever have any conversation with Mrs. Edwards directly?

A. No, I never even knew she came in.

Mr. Sembower: Continuing the complaint, it says:

“That Mrs. Edwards’ husband refuses to pay the bill on the grounds that the doctor did not perform the services he stated he would and for the further reason that if they, the sister, had waited for the prescription, the doctor’s failure would have been serious.”

Q. Does that correspond with your recollection?

A. No, I didn’t tell them anything like that.

Q. Doctor Robinson, did the defendant Dr.

(Testimony of Miles H. Robinson.)

Stevens talk with you, have a conversation with you, about the [309] so-called Edwards' complaint?

A. Yes, he did.

Q. Approximately when did that take place?

A. Well, the notation on this complaint states that it happened on the 23rd of September, and I think that is approximately correct because it was several days before the meeting where we discussed this matter, which was, I think, the 25th.

Q. You are referring to a pencilled notation which appears on the exhibit? A. Yes.

Q. Where did the meeting with Dr. Stevens take place?

A. Well, I was walking along the sidewalk in front of the First National Bank of Seattle here and Dr. Stevens stepped up to me and——

Q. Pardon me, Dr. Robinson, could you have meant Walla Walla?

A. Well, I meant it is the Seattle Branch.

Q. I beg your pardon.

A. I mean it is the Walla Walla Branch of the Seattle bank here.

Q. Thank you. Continue.

A. And Dr. Stevens stepped up to me and, without any preliminaries, said a complaint had been made against me by someone—I suppose he said Mrs. Edwards—"But you didn't send them a prescription," something of that [310] kind, "and you evidently charged them a dollar and a half, and we have looked into the matter and we think you

(Testimony of Miles H. Robinson.)

should just forget the bill in the interest of happy relations with the public.”

Q. And what did you say, if anything, to Dr. Stevens?

A. Well, I didn't really know what to say for a minute. I was quite startled. I think he then explained that he was chairman of this new grievance committee, and I hadn't known who was on it, it was kept secret, and I said, “Well, I don't see how this is any business of the grievance committee. It is a perfectly legitimate charge. The family has said nothing to me about it and you are telling me just to forget a bill.” I said, “I don't think that is right.”

Q. Did Dr. Stevens say anything to you in response to that?

A. Well, he probably did. I think he gave me a little tale about public relations and keeping the public happy, and so on, and I probably told him what I believed then and believe now, that public relations are made in the doctor's own office and that nobody else can really make them for you.

Well, he was rather persistent about it and I became a little bit annoyed and I said, “Well, if you think I am doing something wrong,” I said, “well, now, look, Ralph, you are running an optical shop in the [311] Baker-Boyer Building selling glasses and making plenty of money selling glasses, and you know and I know that that is strictly unethical.” And I said, “Why don't you look at the moat in your own eye, so to speak, before you come

(Testimony of Miles H. Robinson.)

and pester me about my miserable little dollar and a half fee?"

Q. Well, what happened following this conversation with Dr. Stevens, if anything, relative to this matter?

A. Well, after I said what I said, why, he had nothing to say and walked off and I walked off to my office, and then we had a meeting, I think, around the 25th or 26th or 27th of September.

Q. Now, you say we had a meeting, to what do you refer?

A. Just an ordinary regular business meeting of the society.

Q. Medical society?

A. Yes. And between the time of my conversation with Dr. Stevens and this meeting, I was thinking, I thought a number of times rather seriously about this business of a secret committee telling a doctor, ordering him around, so to speak, about his little fees, and I thought, well, this is just one more thing of a commercialistic nature. And I already felt that there had been resentment against me for resigning from the bureau and my reaction was that Stevens, who was the president of the bureau and always been the most vocal person on it, that he was [312] just making a little trouble for me because I had resigned from the bureau and I felt he was setting a very bad precedent, so when we had this meeting——

Q. Well, now, Dr. Robinson, you testified a moment ago that Mr. Fullerton had stopped by your



(Testimony of Miles H. Robinson.)

office. Was this meeting which you attended of the society before or after the visit which Mr. Fullerton made to your office?

A. Well, I think it was well after because my contact with Mr. Fullerton was around the time that I had written this letter of August 11th.

Mr. Sembower: I ask that Plaintiff Exhibit No. 15 for identification be admitted in evidence.

Mr. Kimball: No objection.

The Court: It will be admitted. That is No. 1, isn't it?

Mr. Sembower: Yes.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 15.)

Mr. Sembower: And I ask that Plaintiff's Exhibit No. 14 for identification be admitted in evidence.

The Court: That will be admitted, also. No objection to that.

(Whereupon, letter from Dr. Stevens to Mrs. Edwards was admitted in evidence as Plaintiff's Exhibit No. 14.) [313]

Q. (By Mr. Sembower): Dr. Robinson, I show you Plaintiff's Exhibit No. 15, which purports to be a letter from C. E. Fullerton on Walla Walla Valley Medical Service Corporation stationery to Mrs. Noel Edwards relating to report of grievance committee, Dr. M. H. Robinson, and ask you if you have ever seen this before? A. Yes.



(Testimony of Miles H. Robinson.)

Q. You testified that Mr. Fullerton left in your office a copy of a letter purportedly addressed to the Edwards. Was that copy a copy of this letter, if you recall? A. Yes, it was.

Q. Dr. Robinson, after Mr. Fullerton left a copy of the letter at your office, what, if anything, else occurred in connection with this matter?

A. Well, my reaction, I suppose, was the first thing. I was really astonished to see this letter. It was a few days after the meeting that we had held, or I mean that I had attended, in which I had got up and in what I thought was a very gentlemanly way I had protested against the operation of this secret committee, and I had mentioned that Dr. Stevens had stopped me on the street and more or less ordered me to forget a little bill of a dollar and a half, and I pointed out that I felt that if this thing was to stand as a precedent, that next week or next month, he could stop me on the street and [314] say casually, "We have decided that \$150.00 bill that you have got that you sent out, that we don't want that paid either." And it was the principle of the thing and quite a few of the doctors at this meeting, a few days before this letter was dropped on my desk by Mr. Fullerton, quite a few of the doctors at the meeting were definitely pleased with the position I had taken and I felt that I had really rendered a service to the society.

Well, then, this letter arrived and I could see that the bureau really meant business, that they were going to really make trouble for me.

(Testimony of Miles H. Robinson.)

Q. Dr. Robinson, pardon me.

Mr. Sembower: May I ask that Plaintiff's Exhibit No. 16 for identification be admitted in evidence.

The Court: Yes, 16 will be admitted.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 16.)

Q. (By Mr. Sembower): Dr. Robinson, I show you Plaintiff's Exhibit No. 16, which is a letter bearing the signature of Miles H. Robinson addressed to Dr. Sam R. Page, dated October the 9th, 1950, and ask you if this is a letter which you sent to Dr. Page? A. Yes. [315]

Q. What was the occasion of your writing this letter to Dr. Page?

A. Well, I was protesting to him this letter from Mr. Fullerton telling my patient not to pay the dollar and a half bill.

Q. Did you receive any response from Dr. Page? Let me ask you first, is this the Dr. Sam R. Page who is among the defendants in this case?

A. Yes.

Mr. Kimball: Mr. Sembower, could that be a mistake? Our list shows that is a letter from Fullerton to Page. I think you referred to a letter from Robinson to Page.

Mr. McNichols: I think that is a misnomer.

Mr. Kimball: I wondered if that is correct.

The Court: 16 shows Fullerton to Page. It should be Robinson to Page?

(Testimony of Miles H. Robinson.)

Mr. Sembower: It should be Robinson to Page.

Mr. Kimball: Okay, we will change our list accordingly.

Mr. Sembower: Because it bears the signature of Dr. Robinson.

Q. Dr. Robinson, in addition to what you have testified, what else did you do after you received the copy of the letter sent to the Edwards by Mr. Fullerton?

A. Well, my immediate reaction was that I wanted to get in [316] touch with the family and see why in the world this complaint had been filed.

Q. And what did you do then?

A. Well, I endeavored to contact the Edwards family and I went over to College Place where they lived. I might say that I was driving all around the town on a lot of calls at that time. I had some very sick patients in the hospital, but I stopped by Mrs. Edwards' or Mr. and Mrs. Edwards' house to ask them about this complaint.

Q. Do you remember where that house was located?

A. Well, I don't exactly. It was in College Place.

Q. Do you remember on or about the date when you made this call?

A. Well, I think it was some time around the middle or the first of the next week. See, Mr. Fullerton dropped the letter on my desk at noon on Saturday and I didn't get around to doing anything

(Testimony of Miles H. Robinson.)

about it until Tuesday or Wednesday. I went over to the Edwards there and my recollection is that I didn't find them the first time I went over and I think that I stopped over again and finally, anyhow, I located them and paid a call on them and——

Q. At their home?           A. At their home.

Q. Do you remember the approximate day that that was? [317]

A. Well, I think it was Tuesday or Wednesday.

Q. And when you went to the house, did this occur at the house?

A. Yes, they invited me in and Mrs. Edwards was there and her mother, Mrs. Brooks.

Q. You say her mother, Mrs. Brooks, was there?

A. Mrs. Tom Brooks.

Q. Mrs. Tom Brooks. Had Mrs. Tom Brooks been a patient of yours?

A. Yes, she had for, oh, six months or more.

Q. Did you have a conversation with Mrs. Edwards and Mrs. Brooks?

A. Yes, we had a very pleasant conversation. I was a little put out when I first went in at the idea of this complaint having been made, but I wanted to really see for myself, because the way Mr. Fullerton had been acting and the attitude of Dr. Stevens on the street and the way things went and the meeting we had made me feel that—well, I just couldn't really believe that the Edwards and the Brooks were making a real complaint.

So the minute I spoke to Mrs. Edwards about it, she was very apologetic and she said, "Oh, well,



(Testimony of Miles H. Robinson.)

I thought maybe you shouldn't have charged that or something." And I explained to her right away how I thought it was an entirely fair charge for my time, and right away Mrs. [318] Brooks brought out her pocketbook and she said, "Oh, Doctor, I would like to pay my bill." "Well," I said, "You don't have to do that." But she said, "Well, I would like to," so she paid some money, I guess it was her bill, \$17.00, I think it was, something like that.

So I said, I said to both Mrs. Brooks and Mrs. Edwards, I said, "This really arouses a little concern about an old problem that we have had in the family, which is Mrs. Brooks."

Q. Well, now, Dr. Robinson, before we leave this particular matter, did Mrs. Edwards say anything to you on this occasion about the treatment which you had prescribed for her daughter?

A. Well, she said the daughter got along fine and no trouble at all.

Q. Did she tell you what the child had swallowed?

A. I don't really remember that we discussed that as to what the child swallowed. I assumed it was sulfa and I really don't recall that we went into what the child swallowed at all.

Q. Did she discuss with you any of the other prescriptions which you testified that you made for the child?

A. I don't believe I had ever given the child a prescription.

Q. I beg your pardon, I was using it in a lay-



(Testimony of Miles H. Robinson.)

man's sense. I meant any of the routines or procedures, I was thinking [319] of inducing the vomiting, did she discuss the inducing of vomiting or anything of that sort?

A. I don't recall that we talked about it even.

Q. If you recall, did she say anything about your not delivering a prescription to her?

A. I don't recall what she said. She said something about a prescription, but it just wasn't apropos, because the child had vomited strictly according to my instructions and everything was fine and there wasn't anything to discuss about any prescription.

Q. Dr. Robinson, I am a little confused by your answers a moment ago about the meeting. I would like to straighten that out before we leave it.

You said there was a meeting of the society at which you discussed the grievance committee. Did that occur before you called on the Edwards, or did it occur after you called on the Edwards?

A. Oh, it occurred before. You see, Mrs. Edwards made her complaint on the 29th of August, if I recall, and Stevens stopped me on the street approximately one month later, on the 23rd of September, as it shows on the complaint there. Then on the 25th——

Q. You are referring to the exhibit that I showed you a moment ago?      A. Yes. [320]

Q. That is what you refer to as the complaint?

A. Yes. Then on the 25th, just about two days

(Testimony of Miles H. Robinson.)

later, I think it was the 25th, we had a regular meeting of the society and I got up and objected on principle and very reasonably, I thought, to this secret committee and to it interfering with my poor little bill of a dollar and a half.

Q. Had you known before Dr. Stevens spoke to you on the street that he was chairman of the grievance committee?

A. I had no idea who was on that committee.

Q. Had you been at any meetings of the society where the establishment of a grievance committee had been discussed prior to that time?

A. I had been to most of the meetings.

Q. Had a grievance committee been discussed at any of the meetings prior to that?      A. Yes.

Q. Do you recall the discussions which were held?

A. That committee was established the way things were usually done in the society. The men that were running things would get together ahead of time and they would jam the thing through in the meeting and before we knew it it was voted in and gone with. And I mean I thought, well, that is one more committee, we have got dozens of them, and at the time I didn't like the idea of the [321] secret committee, but I thought, well, it will die a natural death or I will never hear anything about it, and I am a new man and it is not up to me to stand up and complain.

But when Stevens spoke to me on the street about it, why, immediately the whole thing struck home

(Testimony of Miles H. Robinson.)

and I thought, well, here is something that they are going to use.

Q. Well, now, Dr. Robinson, do you recall a meeting at which they discussed the establishment of a grievance committee?

A. I recall one of the meetings. I particularly recall the one where they made it a secret committee.

Q. Do you remember about about when that occurred?

A. Well, it was back in May or June of 1950, and the reason——

Q. And who was presiding at that meeting?

A. Dr. Page.

Q. Is that the Dr. Sam Page who is a defendant in this cause?      A. Yes.

Q. Did Dr. Page make any statements relative to the creation of a secret grievance committee?

A. Yes, he did. Stevens, I think, moved that the committee be created and somebody seconded it, and then someone in [322] the audience said—well, no, I guess it was in a later meeting the question of secrecy came up. Anyhow, the question was raised in some meeting, then or later, that who was on this committee, and Dr. Page spoke right up and said, "I am the chair and I don't think I will reveal who is on this committee." Well, there was immediately a little stir in the room and then right away quick Dr. Holmes spoke up and said, "I move that the question of who is on the committee, whether we reveal that or not, be referred to the board of trustees

(Testimony of Miles H. Robinson.)

for decision." So, you see, the issue was taken immediately out of the hands of all of us members.

Q. Did the trustees then subsequently make any report to the society one way or the other with reference to whether this committee should be kept secret or not?

A. They never made any report and that is why it never made any impression much on me at the time. Now, I might have to qualify that. It could be that they did in a month or two, they might have reported back to the society that it was secret. I just couldn't tell you. But, anyhow, it was decided among the trustees in one of their private meetings.

Q. Did you make any demand upon Dr. Page in open meeting that the committee not be secret?

A. No, I didn't, and for just one reason: It all happened [323] so fast that I didn't have time to think, and Dr. Holmes jumped up and moved that it be settled by the trustees privately, and just like a flash the whole issue was gone.

Q. Dr. Robinson, returning to the matter of the Edwards' complaint, did you receive any knowledge of a complaint being filed from the date of when you gave the directions to treat the child and the time when Dr. Stevens spoke to you on the street?

A. Absolutely no information of any kind whatever.

Q. During that interval, were you treating any members of the Tom Brooks family and the Edwards family?

A. Yes, right along. I think I saw them six



(Testimony of Miles H. Robinson.)

or seven times or maybe more. I had no idea there was anything wrong in the family or any objection or any complaint of any kind.

The Court: Court will suspend now until 10 o'clock tomorrow morning. [324]

\* \* \*

Q. (By Mr. Sembower): Dr. Robinson, when did you first hear that a complaint had been filed against you in the local medical society by one Thomas Brooks, if you recall?

A. I believe that was on about November 10th or 11th, and I know that it came with a letter from Dr. Page, the president of the society, enclosing this complaint of Mr. Brooks.

Q. For the record, Dr. Robinson, will you state what year that was?      A. 1950.

Mr. Sembower: I hold in my hand Plaintiff's Exhibit No. 39 marked for identification, purporting to be a letter from Sam R. Page to Dr. Miles H. Robinson, and ask that it be admitted into evidence.

Mr. Kimball: No objection.

The Court: Is there no objection?

Mr. Kimball: No objection.

The Court: It may be admitted, then.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 39.)

Q. (By Mr. Sembower): I show you Plaintiff's Exhibit No. 39, [332] Dr. Robinson, and ask you if you have seen that before?      A. Yes.



(Testimony of Miles H. Robinson.)

Q. What is this letter?

A. It is a notification to me that an official hearing will be held by the trustees of the society on a complaint made by Mr. Brooks which is enclosed herewith.

Mr. Sembower: Reading from Exhibit No. 39, Sam R. Page wrote to Dr. Robinson in a letter dated November 10, 1950:

“At a special meeting of the Board of Trustees of the Walla Walla Valley Medical Society held last evening at the Grand Hotel, there was presented to the Board a complaint by one Thomas R. Brooks. His complaint was in the form of a written statement signed by him and the board considered it and expressed their desire to hear more fully both sides of this controversy. A copy of the motion passed by the trustees is as follows:

“ ‘That an official hearing be held by the Board of Trustees of the Society on the complaint of Mr. Brooks; that Dr. Robinson be served with a copy of the complaint and notified that the hearing is to be held and requested to be present to present his [333] answer; that the meeting be held in the office of Dr. Ralston November 21, 1950, at 8 p.m.’

“The meeting to be held November the 21st will afford you an opportunity to be present and present any evidence or witnesses you may have in defense of the charges made in the complaint of Mr. Brooks and to cross-examine any witnesses and otherwise rebut any evidence offered to sustain the complaint. We hand you herewith a copy of that complaint

(Testimony of Miles H. Robinson.)

signed by Mr. Brooks in order that you may be entirely familiar with the nature of it.

“The Board expressly wishes you to understand that the setting of this hearing should not be construed as any indication of their belief of the truth or falsity of any of the charges made by Mr. Brooks, but they feel that it is for the best interests of you and the society that a full opportunity be had by the parties involved to present their sides of the matter as provided for in the constitution and by-laws of the society.”

Q. Dr. Robinson, were there any enclosures which accompanied this letter? A. Yes. [334]

Q. What enclosures accompanied it?

A. The Brooks' complaint.

Q. Was there any other enclosure besides that?

A. I don't recall any.

Mr. Sembower: I hold in my hand Plaintiff's Exhibit marked No. 18 for identification, purporting to be a transcript of a statement given by one Thomas Brooks, and ask that it be admitted in evidence.

The Court: I think it might avoid confusion if you let the clerk stamp as admitted documents as they are admitted, because if you get several of them going, he may not be able to remember.

Mr. Sembower: That's right.

The Court: What was this last one? What was the number?

The Clerk: 18.

(Testimony of Miles H. Robinson.)

The Court: Oh, 18. Yes; well, that will be admitted. There is no objection to that, I see.

(Whereupon, the said statement was admitted in evidence as Plaintiff's Exhibit No. 18.)

Q. (By Mr. Sembower): I hand you Plaintiff's Exhibit No. 18, and ask you if this is the document to which you have just referred as the Brooks' complaint? A. Yes; that is. [335]

Q. When did you first meet Tom Brooks, Dr. Robinson?

A. It was in the early part of 1950. I really couldn't say just when without having my case record on the family and my ledgers.

Mr. Sembower: I hold in my hand Plaintiff's Exhibit marked No. 269 for identification, purporting to be a folder containing ledger sheets, memoranda, relating to one Mr. T. R. Brooks——

The Court: Is that number 9?

The Clerk: 269.

Mr. Sembower: 269.

The Court: Oh, 269. I misunderstood.

Mr. Sembower: ——of 1034 Valencia Street, and I ask you, Dr. Robinson, what this folder is?

A. Well, that contains what record I have that I wrote down on Mr. Brooks. It contains the reports from the laboratories on tests made on him, and I notice also on Mrs. Brooks. Those ones on Mrs. Brooks really should be in her file. And it also contains the ledger sheets on Mr. Brooks going back

(Testimony of Miles H. Robinson.)

as far as March 17, 1950, and it just occurs to me now that there may be a ledger sheet earlier than that on them, because as our ledger filled up with these loose leaf sheets, we tended to put into a more permanent filing, a file we weren't using, of earlier sheets. [336]

Q. Thank you.

A. But in answer——

Q. If you will just hold the answer for just a second while I show it to counsel.

Mr. Sembower: Did counsel wish to see it?

Mr. Kimball: I think we glanced through that, Mr. Sembower. Better put on some identification.

Mr. Sembower: I was going at this point to ask that it be admitted in evidence. Does counsel have objection?

Mr. Kimball: Well, in view of the Doctor's statement that there should be other things in it, I think he should make the customary proof in regard to such documents.

Mr. Sembower: All right. I think, then, at this time I will also present other case records.

Q. I hold in my hand Plaintiff's Exhibit 270 for identification, 271, 272, 273, 274, 275 and 276, purporting to be folders containing memoranda, notations and ledger sheets, and ask you, Dr. Robinson, if you have seen these before?

A. May I say, Mr. Sembower, that any further ledger sheets are over in the hotel room. I didn't have those handy and didn't put them into the big



(Testimony of Miles H. Robinson.)

pile that we brought in. I just didn't know whether you wanted that or not.

Q. Well, if you will be kind enough just to identify these, if you have seen these before? [337]

A. These are the——

Q. You have seen them before, Dr. Robinson?

A. Yes.

Q. And what are they?

A. These are records on other members of the family.

Q. They are records from your case files?

A. Yes.

Q. Thank you.

Mr. Sembower: Does counsel wish to examine these?

Mr. Kimball: I think we have examined them. Our objection goes to the fact that they aren't complete records and there is no showing that they were made at the time of the entries, and so on.

Mr. Sembower: All right——

The Court: I think probably you should show, if that is the case, that they were made in the due course of business of the Doctor's office and made at the time they occurred, and also—well, they reserved all objections to these particular documents.

Mr. Sembower: Yes.

The Court: Also, I should think that if the records are not complete, that at least counsel would be entitled to know what the omissions are and have an opportunity to inspect them.

Mr. Sembower: What I was hesitating for is I



(Testimony of Miles H. Robinson.)

thought [338] at this time would present the other of his books and records which have been offered as exhibits and have him qualify them all at the same time.

The Court: All right.

Mr. Sembower: We haven't been able to find the number, though we had it this morning.

The Clerk: That is 303.

Mr. Sembower: 303.

Q. I hold in my hand Plaintiff's Exhibit for identification No. 303, purporting to be ledger sheets, and ask you, Dr. Robinson, if you have seen these before?

A. Yes, those are my day sheets.

Q. I have here Plaintiff's Exhibits for identification No. 304 and No. 304-A, purporting to be ledger sheets, 304 containing 371 leafs and 304-A 308 leafs, and ask you, Dr. Robinson, if you have seen these before? A. Yes.

Q. And what are they?

A. Those are what I considered my current ledger sheets.

The Court: What are those numbers, Mr. Sembower?

Mr. Sembower: 304 and 304-A.

The Court: Oh.

Q. (By Mr. Sembower): Dr. Robinson, were all of the entries in the books and records that you have just examined, the ledger sheets, made under your supervision and direction? [339]

A. Yes.

(Testimony of Miles H. Robinson.)

Q. What books of account and patient records did you maintain in your office?

A. I kept a folder on, I would say, 90 or 95 per cent of my patients, with their name on the folder and inside notes on their cases, and in all serious cases and in all cases that ran for more than one or two visits, I kept notes on the progress of the case. Then——

Q. Now you are referring to folders. Among those folders were the Exhibits 270, 271, 272, et cetera, that you have just examined?

A. Yes, those are typical records.

Q. Now, you state that you maintained them on almost all of your cases. What cases would you not maintain such records upon?

A. Well, a man might come in for one visit and I would never see him again and his difficulty was trivial, I might not set up a folder for him and there would be no case record on him, but he would be on the day sheet in any case and if that bill was charged, he would be on the ledger sheet in all cases.

Q. Now, you have mentioned the folders that you maintain. What other books and records did you maintain in connection with your practice? You have just mentioned the day sheets. How were they maintained and what function did [340] they perform?

A. Well, the day sheet was the record of business done on each day and it consisted of one or more pages of that ruled paper.

(Testimony of Miles H. Robinson.)

Q. You mean the ruled paper such as is contained in the purported day sheets in Plaintiff's Exhibit for identification 303? A. Yes.

Q. Continue. That is, explain to us how these day sheets were used and operated.

A. Well, the day sheet would be either on my desk or on my secretary's desk, and as each patient came in, by the time the patient left, I would write down or the secretary would write down the name of the patient, usually on almost all cases, whether it was an office call or house call or a hospital call, and sometimes we would write down very briefly what the treatment was and then we would write down the charge, and in the next column we would write down payment, if any, either on account or for that visit.

Q. And then, Dr. Robinson, what other books and records did you maintain in addition to the day sheets?

A. Well, every day or so, whenever she could get to it, my secretary would transfer the notations on the day sheet to a ledger sheet in the [341] ledger.

Q. And now, when you refer to ledger sheets, were those such sheets as we see in Plaintiff's Exhibit for identification 304? A. Yes.

Q. And how were they maintained?

A. Well, they were very carefully kept up. We tried to have a system so that there would never be a mistake which would offend a patient.

Q. Now, Dr. Robinson, were there any other

(Testimony of Miles H. Robinson.)

books and records besides those contained in these exhibits?

A. I mentioned earlier that it just did occur to me, I have another stack of ledger sheets about as big as that or maybe bigger.

Q. By indicating that, you mean those contained in Plaintiff's Exhibit for identification 304-A?

A. Yes. And the only reason that this other set is separate is they are either patients that I hadn't seen for a long time or it just occurred to me when you asked me when I first saw Tom Brooks that it was conceivable, because I hadn't really checked the point, that there might have been an old ledger sheet on him which would show that I had seen him earlier than this ledger sheet shows.

Q. Why would that be separate from the other ledger sheets?

A. Well, the book in which we kept those ledger sheets would [342] only hold so many ledger sheets. We had two books and, while they were big books, they would fill up and fill the ring, fills the rings up, and when that happened, my secretary would go through the big ring binder ledger and she would pick out what seemed to be inactive accounts and lay them aside and they were tied up with string and I still kept those.

Q. That is, would those be regarded in the common parlance as dead files?      A. Yes.

Q. And where are those files kept?



(Testimony of Miles H. Robinson.)

A. Well, they were just in a drawer in my office?

Q. Well, now, Dr. Robinson, were there any other books of accounts and patients' records kept in connection with your practice besides the exhibits we have before the court now?

A. I was trying to think about that. I don't think that there was anything else really directly dealing with patients, but there were my deposit slips for all the money that was put in the bank from my practice. We kept those and I think I have most of them. There then was all the paper that had to do with the state, social security on my office help, but these two items here, the day sheets and the ledger sheets—I should say the three items—and the patients' records, were all that [343] I needed really to conduct my practice as far as the patients were concerned.

Q. I show you Plaintiff's Exhibit for identification 303, purporting to be day sheets maintained in connection with your practice, and ask you in whose handwriting they are kept, if you know?

A. Yes, I know the handwriting very well. The handwriting in the beginning of these day sheets here, which start when I moved into Dr. Campbell's office, is in the handwriting of my secretary at that time, whose name was Betty Newell. She has since married. I think her name is Murray, but I am not sure now. Then whatever is not in her handwriting is either in my handwriting or in the handwriting of other office help that I had, which



(Testimony of Miles H. Robinson.)

would be—there might be some in Mrs. Andrews' handwriting, and some, I know, in my secretary's that I had for several years after toward the end, which was Mrs. Wilkinson's handwriting.

Q. Were these maintained under your supervision and direction?      A. Yes.

Q. The entries made under your supervision and direction?      A. Yes, they were.

Q. Was Plaintiff's Exhibit 303 for identification made in the usual and ordinary course of [344] business.      A. Yes, they were.

Q. Are the ledger sheets true and correct?

A. They are absolutely true and correct as far as we can possibly arrange it at the time.

Mr. Sembower: I offer in evidence Plaintiff's Exhibit 303 for identification.

Mr. Kimball: No objection.

The Court: 303 will be admitted.

(Whereupon, the said ledger sheets were admitted in evidence as Plaintiff's Exhibit No. 303.)

Q. (By Mr. Sembower): Dr. Robinson, I show you Plaintiff's Exhibits for identification 304 and 304-A, purporting to be ledger sheets—

The Court: What general period do they cover, Mr. Sembower?

Q. (By Mr. Sembower): What general period do these ledger sheets cover in your practice, Dr. Robinson?

A. Excuse me, the day sheets that were just handed to me?

The Court: I notice this one marked 303 is the

(Testimony of Miles H. Robinson.)

one regarding which you just testified here, ledger sheets, I believe.

Q. (By Mr. Sembower): Yes, I believe you stated a moment ago that they commenced when you began practice in Dr. Campbell's office, is that correct? [345]

The Court: I didn't get that definitely, that is the reason I asked about it.

A. Well, sir, those are what I call my day sheets.

The Court: Oh, I see.

A. 304 is my ledger sheets.

The Court: Yes. Well, I didn't mean to confuse you about what they are. I just wanted to know generally what period they covered. I didn't get that specifically.

A. Yes. Well, I can tell you exactly. Those day sheets begin in February, 1950, on the day that I moved into Dr. Campbell's office and took over his method of day sheets, which is what these are.

The Court: I see. Do these have any purpose other than going to the measure of damages, showing the extent of the Doctor's practice, or do they pertain directly to some of the issues here?

Mr. Sembower: They may pertain to the issues here.

The Court: They might have some bearing as to ethics.

Mr. Sembower: Yes, with reference to ethics and these persons.

The Court: But they serve both purposes, I presume?

(Testimony of Miles H. Robinson.)

Mr. Sembower: They serve both purposes, that is correct.

The Court: All right.

Q. (By Mr. Sembower): Now, Dr. Robinson, with respect to Exhibits 304 and 304-A, were all the entries in the [346] ledger sheets contained in these exhibits made under your supervision and direction? A. Yes, they were.

Q. Do you recognize the handwriting which appears thereon?

A. Yes, I recognize it perfectly.

Q. And whose handwriting is it?

A. Well, the handwriting is also that of Betty Newell, my secretary at the time, and after she left, they are in the handwriting of Mrs. Wilkinson, and I don't think that there is hardly any of my own handwriting in the ledger sheets because I didn't directly make those entries.

Q. But they were under your supervision and direction?

A. Yes, they were. I checked carefully at all times to see that it was done properly.

Q. Were they maintained in the ordinary, usual course of business? A. Yes, they were.

Q. And are they true and correct?

A. They are entirely true and correct as far as we were able to do so at the time.

Mr. Sembower: I offer in evidence Plaintiff's Exhibits 304 and 304-A.

Mr. Kimball: No objection.

The Court: They will be admitted. [347]

(Testimony of Miles H. Robinson.)

(Whereupon, the said ledger sheets were admitted in evidence as Plaintiff's Exhibits 304 and 304-A.)

Q. (By Mr. Sembower): Dr. Robinson, I now hand you Plaintiff's Exhibits for identification Numbers 269, 270, 271, 272, 273, 274, 275 and 276, purporting to be folders containing case records for patients treated in your office, and ask you if you have seen these before? A. Yes.

Q. Were these folders compiled and maintained under your supervision and direction?

A. Yes, entirely.

Q. Do you recognize the handwriting which appears on the entries contained therein?

A. Yes, they are all in my handwriting, because all my records on my patients, with very few exceptions, are in my handwriting. Once in a while or for a time, I thought of having my secretary type up records.

Q. Dr. Robinson, but these are in your own handwriting?

A. But all these here are in my own handwriting.

Q. Were they maintained in the usual and ordinary course of business? A. Oh, yes.

Q. And are they true and correct?

A. Absolutely true. [348]

Q. You mentioned that there was a possible omission from one of the folders. What other omissions might there be from these folders, if any?

A. I don't think I said there were any omis-

(Testimony of Miles H. Robinson.)

sions from the folders because there are no omissions from the folders so far as I know. Every note that I ever wrote on a patient is in these folders, but there are some other old ledger sheets on my dead file, you might say, that I do have.

Q. And aside from those, there would be no omissions from these records?

A. There are no omissions from my records on patients at all.

Q. And they are true and correct?

A. They are true and correct.

Mr. Sembower: I offer in evidence Plaintiff's Exhibits 269 through 276.

Mr. Kimball: May I ask a question on voir dire?

The Court: Yes.

### Voir Dire Examination

By Mr. Kimball:

Q. Dr. Robinson, do each of these files contain an individual record for the patient whose name is on the file?

A. They contain whatever record that I kept on the patient, and the reason I say that is that I kept a carbon copy, for example, of practically all the prescriptions that I [349] wrote, and sometimes when I was very busy and in a hurry, I would merely put the carbon copy of the prescription in the folder and not make a pen and ink note on a piece of white paper, which I did with more complicated cases.



(Testimony of Miles H. Robinson.)

Q. Well, my question didn't go to that. I meant to ask, for example, in the file marked Mr. Tom Brooks, are all those records in there pertaining to Mr. Tom Brooks, or do some of the records therein pertain to Mrs. Tom Brooks or someone else?

A. Well, as I mentioned a little time ago, I see that through an inadvertence, I have some of Mrs. Brooks' laboratory tests in Tom Brooks' file, and the reason for that is that they at one time were all grouped together, trying to put them in the right places, and apparently they landed in Mr. Brooks' file, but that is purely accidental.

Q. When were they reassembled after they were all grouped together, Doctor?

A. Well, what happened was that when this litigation developed, at some stage or other my lawyer asked for all the laboratory tests on the Brooks family and I put them all in a bunch and had them photostated and then tried to get them back into Mr. Brooks' and Mrs. Brooks' files, and I just noticed here today that apparently the laboratory tests all went back into Mr. Brooks' file [350] instead of Mrs. Brooks'.

Q. I see. Then, these records as you are now presenting them are not the way they were originally filed as you kept your books on that patient?

A. Well, yes, really, they don't differ substantially for this reason: That when I had several members of one family, quite often for a while I would have all the records of all those patients of

(Testimony of Miles H. Robinson.)

the same family in one folder. For example, a mother would come in with her child and the file would probably have the mother's name on it or it might have the child's name on it, and until I could set up separate files or separate manila folders, either patient, either mother or child, would have my notes in the file which might have the mother's name on it or the child's name.

Q. Just one more question: How recently have you assembled these files in their present condition?

A. Well, there has been no change in the way those files were assembled with the single exception that when we gathered all the lab tests on the Brooks family—you see there were very many, there were about seven or eight or nine tests—they were pulled out of the file and we tried to put them back in the file and apparently put some of Mrs. Brooks' tests back in Mr. Brooks' file.

Q. I guess I didn't make myself clear. I asked when this [351] was done, Dr. Robinson?

A. Oh. Well, I think it has been probably three years ago that those things were photostated for the suit that was brought in Superior Court here.

Q. Is there any way for you to distinguish between the lab test items that are now filed so that you could know for sure on what patient they were conducted?

A. Oh, yes. The laboratory tests contain the name of the patient, and I might explain on that that for a while, since I had a number of patients with syphilis, I would send the request for the

(Testimony of Miles H. Robinson.)

laboratory examination in with whatever you call it, an assumed name, on the test, and then I had my own notes just who that person was. The reason that was done—it was never done on tests sent to Seattle, but on tests sent to the County Health Department here in Walla Walla, being as it was a small town and all, I felt that there was no use broadcasting the name of the patient to the Public Health Department here.

The Court: One of these files is presumably Mr. Brooks' file, and another one is Mrs. Brooks'?

Mr. Sembower: Yes.

The Court: Why can't the tests that apply to Mrs. Brooks be put back in her own file?

Mr. Kimball: If they can, I think that would be a [352] good way to do it.

Mr. Sembower: Very good. I just didn't want to disturb them.

Q. (By Mr. Kimball): May I ask one more question on this, Doctor? I notice there is ink writing on some of these laboratory slips. Is that your writing?

A. I would have to see that a little closer. Oh, yes, that is my writing.

Q. When were those writings placed on there?

A. Those were made at the time as soon as the slip came back from the laboratory.

The Court: Where were the laboratory tests taken? I gather from what you say, Dr. Robinson, some in Seattle and some here in Walla Walla at the County Health Office?

(Testimony of Miles H. Robinson.)

A. Yes, sir.

The Court: None of them were done by you personally or in your own office, were they?

A. No, none at all.

The Court: I see.

A. There was a definite rule——

The Court: You took the blood specimens and sent them out for analysis, is that it?

A. Yes, sir.

The Court: All right. [353]

Direct Examination

(Continued)

By Mr. Sembower:

Q. These files represented by Exhibits 269 through 276, Dr. Robinson, all related to members of one family? A. Yes, they do.

Q. Would that family be described as the Brooks-Edwards family which has been referred to in testimony here?

A. Well, that is the way I regarded them. They were all relatives, close relatives, and I think that there are some of the Lepianes in there, also, because Mrs. Lepiane was another one of the daughters of Mr. Brooks.

\* \* \*

The Court: So there won't be any misunderstanding about it.

Let's see, you have offered those in evidence, haven't you? [354]

(Testimony of Miles H. Robinson.)

Mr. Sembower: Yes, that's right.

The Court: Are there any objections?

Mr. Kimball: No.

The Court: They will be admitted, 269 to 276.

(Whereupon, the said medical records were admitted in evidence as Plaintiff's Exhibits 269 to 276, inclusive.)

The Court: We will take a ten-minute recess at this point.

(Whereupon, a short recess was taken.)

Q. (By Mr. Sembower): Dr. Robinson, I hold in my hand Plaintiff's Exhibit for identification 282, which purports to be a day book, apparently, with entries by the day, and ask if you have seen this before? A. Yes.

Q. What is that, Dr. Robinson?

A. That is my day sheet for all my business from the time when I started to practice in Walla Walla until I moved into Dr. Campbell's office.

Q. In whose handwriting is it kept, if you know?

A. Yes, that was kept in my handwriting while I had no one to help me in the office, and then it was kept partly in the handwriting of a lady who was my secretary, and finally—yes, that covers it.

Q. When it is not in your handwriting, were the entries [355] made under your supervision and direction? A. Oh, yes.

Q. Were they made in the usual and ordinary course of business? A. Yes.



(Testimony of Miles H. Robinson.)

Mr. Kimball: No objection.

Mr. Sembower: Thank you.

The Court: Very well. That is number——

Mr. Sembower: Number 382.

Mr. Tuttle: Isn't it 282?

Mr. Sembower: 282, sorry.

The Court: 282. It will be admitted, then.

(Whereupon, the said records were admitted in evidence as Plaintiff's Exhibit No. 282.)

Mr. Sembower: Your Honor, this is the day book which dates up to the time when Dr. Robinson went into Dr. Campbell's office, and it is owing to my clumsiness of not being able to find it earlier.

The Court: Oh, I see.

Q. (By Mr. Sembower): Dr. Robinson, by consulting Plaintiff's Exhibit 269, can you refresh your recollection as to when you first saw Tom Brooks?

A. I know where I first saw him.

Q. And where was that? [356]

A. That was in his home when I went to call on Mrs. Brooks.

Q. And approximately when was that?

A. Well, as nearly as I can remember, it was in March of 1950 some time.

Q. Was Mrs. Tom Brooks a patient of yours?

A. Yes.

Q. Was Mrs. Tom Brooks also known as Mrs. Grace Brooks?      A. Yes.

Q. Dr. Robinson, yesterday you told the court about your training and background in medicine,

(Testimony of Miles H. Robinson.)

and I ask you at this time if in connection with your attendance at the School of Medicine at the University of Pennsylvania, you took any courses there which were of particular distinction and importance in that program?

A. Yes, I did.

Q. What was one of those courses?

A. It was our course in dermitology and syphilology.

Q. Dr. Robinson, tell us, please, what is dermitology and what is syphilology?

A. Well, it is the subject of diseases of the skin and syphilis.

Q. And what is syphilis?

A. It is a disease caused by a particular organism, spirochete, and one of the great plagues of mankind.

Q. Will you describe, Dr. Robinson, what was the nature of [357] the training which you received at the University of Pennsylvania in syphilology?

A. Well, it was really very unusual. Dr. Stokes was——

Q. You refer to Dr. Stokes, who is that, please?

A. He was professor of the department and taught the course.

Q. Can you give his full name, please?

A. John A. Stokes.

Q. Proceed to tell us about that course of training.

A. Well, his course was famous all over the country and he had written articles about it and

(Testimony of Miles H. Robinson.)

published them. We all sat in a great amphitheater and had a constant parade of patients down below. It wasn't a lecture course exclusively like most of the courses, it was really a clinic, and we saw hundreds of patients there and also had a very elaborate experience over in the great County Hospital of Philadelphia.

Q. Will you describe your experience and training there at the County Hospital in Philadelphia in syphilology?

A. Well, it is one of the largest hospitals in the country and they have whole floors devoted to cases of syphilis, and the reason it had so much importance was because that is one disease that is famous, or I should say notorious, for imitating every other disease in the body. Whatever it attacks, it causes diseases that look like that particular organ. If it is in the brain you get [358] paresis, which I think twenty-five per cent of all cases of insanity before the days of penicillin were due to syphilis of the brain. If it attacks the heart, you have high blood pressure. If it attacks the stomach, you have stomach trouble. It imitates every disease.

The Court: It has been called the "great imitator," has it not?

A. Yes, sir.

The Court: All right, go ahead.

Q. (By Mr. Sembower): What types of patients did you see, Doctor, with syphilis at the Pennsylvania hospital?

(Testimony of Miles H. Robinson.)

A. We saw every kind of syphilis there was, from the manifestations of the skin, the heart, the nervous system, the lungs, the liver, the brain, the eye, the ear. Really, it was the most extraordinary course in the school.

Q. Did you have any experience there at the hospital in taking lumbar punctures?

A. Well, when I was an interne, I suppose I took 75 or did 75 or 80 lumbar punctures especially for syphilis. It is a difficult and a somewhat dangerous and highly skilled procedure.

Q. Approximately how many other syphilis patients, if you recall, did you observe during this course of training at the Pennsylvania [359] hospital.

A. Oh, I would say 40 or 50, at least. It was a very large hospital and we were down in the Colored section and we had a great many people with that disease.

Q. Dr. Robinson, have you had occasion in the course of your practice of medicine to pursue your study of syphilology and your observation of patients?

A. Well, I did. The situation about that disease, I can tell you in a word, and Dr. Stokes told it to us four times a day every time we had a class. He said, "The great thing is you have to suspect it, and," he says, "It imitates everything, but," he says, "It is very easy," and he would say to the class, "Now," he says, "what do you do?" and the class would all shout out, "Take a Wasserman." It



(Testimony of Miles H. Robinson.)

was a sort of a little ritual that we had, and he said, "All you have to do is take a Wasserman and the health department is glad to do it free and you will pick up many cases that way."

Q. Dr. Robinson, would you say that diagnosis and diagnosis of syphilology was a specialization in your practice?

A. Well, it really almost was, because here in Walla Walla I had only about a half dozen cases, but they were very interesting cases and the treatment was always highly successful because of the specific medicine that we have for that disease. So they were very grateful patients and I was very much interested in them. [360]

Q. What specific treatments are available in modern medical practice for this disease?

A. Well, at the time that I took the course, the heavy metals were the greatest treatment; that is, arsenic and bismuth, discovered primarily by Erlich, the famous 606, and they were specific for the disease and revolutionized the treatment in the first place. Then by the time I came to Walla Walla, penicillin had been discovered, and penicillin far outranked any other treatment that had ever been discovered for the disease. In fact, it hit the disease so hard that it closed down, I think, seven journals of syphilology. They just didn't have enough business, enough in the subject, to continue all the research and work that was being done.



(Testimony of Miles H. Robinson.)

Q. Dr. Robinson, did you attend and take charge of, as attending physician, Mrs. Tom Brooks?

A. Yes.

Q. That is the Mrs. Tom Brooks who is the wife of one of the defendants in this case?

A. Yes.

Q. When did Mrs. Brooks become a regular patient of yours, to the best of your recollection?

A. Dr. Campbell introduced me to Mrs. Brooks in his office and I was just in the recess checking through my day sheets and apparently it was in late February. In fact—— [361]

Q. February of what year?

A. Of 1950. In fact, I think it was within a week or two after I came into his office on the first of February and he introduced me to her as a mysterious neurological condition which had been checked over by various doctors in the town.

Q. What is a neurological condition, Dr. Robinson.      A. A disease of the nervous system.

Q. What did you do on that occasion, if anything, when you first treated Mrs. Brooks?

A. Well, I examined her carefully from head to foot and I immediately thought of Dr. Stokes, as I always do in any mysterious medical difficulty, and I took a routine Wasserman on her, and then in two or three days it came back from the County Health Department as being strongly positive. Of course, I knew nothing about how she had caught it, blood transfusion or any way she might catch

(Testimony of Miles H. Robinson.)

it, but I immediately instituted penicillin treatment on her.

Q. And, Dr. Robinson, what was the general progress of Mrs. Brooks' case under that treatment?

A. Well, we didn't expect anything too startling right away, because when the disease gets into the nervous system, it gets a very strong foothold and no treatment dislodges it in any dramatic way, but there was no doubt about it, [362] after I recall it would be a week or two, that this paralysis in her foot was definitely decreased and she could lift the foot a little more than she could before and she felt a great deal better. That is all the improvement that we were able to get in her. But, of course, the only thing to do was to give her an absolutely thorough course of the penicillin for months, because it is the wonderful answer to the disease, it is absolutely harmless, and the chance of checking the progression of the disease, which is very likely to move into the brain and cause insanity, it is just the only thing to do.

Q. Based upon your objective physical examinations of Mrs. Brooks and your treatments, what then, Dr. Robinson, was your diagnosis?

A. Well, I thought there was no question about the diagnosis at all. It was neurosyphilis.

Q. How frequently did you see Mrs. Brooks for treatments?

A. Well, what we arranged there, I went out to the home—they wanted me to come out to the home because it was hard for her to get around with this

(Testimony of Miles H. Robinson.)

lame foot—and I arranged to teach the daughter how to give the injections of penicillin. It made a great deal of difference financially. If she came to the office, I would have to charge her \$4.00 a visit, and if they gave the penicillin [363] themselves, under my direction and responsibility, it would cost them fifty cents an injection, and I was very sorry for Mrs. Brooks and I knew that the treatment would cost several hundred dollars if she came to the office, so I did what I have done in a number of other cases to save expense. I have taken some risk in the person that I teach to give the injections of their making a mistake, but to save them money I have had them give it in the home, and that is what I did here.

Q. Dr. Robinson, by referring to your books and records here, would it be possible for you to give us a quick summary of the visits which Mrs. Brooks made to you or you made to her home in connection with her malady?

A. It just so happens that the ledger sheet on Mrs. Brooks is in Mr. Brooks' file because he paid the bills, and we pulled that ledger sheet out and put it with Mr. Brooks' for that particular reason.

Q. I hand you, then, Plaintiff's Exhibit No. 269 and ask you if you will examine it and tell us briefly the chronology of Mrs. Brooks' visits to you or your visits to her in connection with her ailment?

A. Well, during the recess, I checked over the day sheets and I noticed that my attention on Mrs. Brooks began ahead of the ledger entries and that

(Testimony of Miles H. Robinson.)

may well have been because she paid cash on those office visits, so I saw her anywhere [364] from a half a dozen to a dozen times before these ledger sheets begin and that can be determined from the day sheets. But anyhow, the ledger sheets—If I may interrupt myself, I checked in the day sheets as well as I could in the recess and the earliest entry I find there is February 28, 1950, and, of course, I was seeing her quite a bit to make sure we kept up with the penicillin.

Q. When did you next see her after that?

A. I don't know without looking at the day sheets, but the ledger sheet begins with March 17th.

Q. March 17?           A. Yes.

A. And when is the next entry that you find on the ledger sheet?

A. Well, on April 11th I did a spinal puncture on her at St. Mary's.

Q. And what year was this, Dr. Robinson?

A. 1950.

Q. All right, proceed.

A. On the 17th—well, she paid on account. On April 24th, she had a penicillin injection, and again on the 26th and on the 28th and on the 1st of May. On the 2nd of May, Tom Brooks was in, and, as I recall, that was the second Wasserman we took on him and I believe I took that myself, that is, a blood sample. On the 3rd of May, Mrs. Brooks [365] had a penicillin injection, and again on the 5th of May, the 8th, the 10th, the 12th, the 15th, and on the 23rd of May we repeated the Was-



(Testimony of Miles H. Robinson.)

serman test on Mrs. Brooks to see whether the quantitative response was improving under penicillin.

On the 21st of June—well, that is a payment of a bill.

On the 22nd of June, she was seen for an associated infection. I don't mean to say associated; she was seen for an infection of the urinary tract, and I might say right there that paralysis of the bladder, of the urinary bladder, is one of the commonest symptoms of the disease, and the minute you get a slight paralysis, you get infection, so that was part of the progress of the case.

Then she was seen on July the 18th for penicillin and on July the 24th. July the 25th, she had more of the urinary difficulty.

On August the 11th, she had an injection, on August the 24th, August the 30th. September the 6th, she paid some money on account; September the 15th, September the 16th.

And then on October the 5th, that time I went out to see them at College Place about this complaint that was filed against me and she paid the balance of her [366] account, which was \$13.00.

Q. Well, now, Dr. Robinson, did you see Tom Brooks, one of the defendants in this case, in connection with the medical difficulty of his wife?

A. Yes, I did, because the prime rule in the disease is to——

Q. When did you see him, Dr. Robinson, first?

A. Well, as I said I think I first saw him in



(Testimony of Miles H. Robinson.)

the home when I was teaching his daughter how to give penicillin to Mrs. Brooks.

Q. Did he subsequently come to your office?

A. Yes, he came.

Q. When did he come to your office, if you recall?

A. Well, I think the ledger there shows May the 2nd on the occasion when we took a repeat Wasserman on him.

Q. You say a repeat Wasserman; did you take an earlier Wasserman test of Mr. Tom Brooks?

A. Yes.

Q. What were the circumstances? When was that, Dr. Robinson?

A. Well, the record shows it was March the 17th.

Q. What were the circumstances of your taking the first Wasserman of Mr. Tom Brooks?

A. Well, I made an appointment for him. I think I talked to him on the telephone and told him that it was [367] necessary to take it. I know that I told his wife and I am not quite sure.

Q. Well, now, Dr. Robinson, when did you have a conversation with his wife with respect to Tom Brooks?

A. Well, we talked about it, I would say, every three or four times I would see her. I would say, "Well, now, how about your husband? We have got these positive tests and I am uneasy about the situation. He ought to come in and have a spinal puncture, make sure that it is not developing into the nervous system, the same as yours is, and what-

(Testimony of Miles H. Robinson.)  
ever that indicates, he ought to have treatment.”

Q. And when did you first actually talk to Tom Brooks about the possibility that he had syphilis?

A. Well, we discussed it in his home on the times when I was teaching his daughter to give the injections.

Q. And then did he come to your office?

A. My recollection is that I never discussed it in the office with him personally.

Q. When was the blood taken for his first blood test?

A. Well, according to the record, it was March the 17th, and I can tell from my memory, I know that it was taken within two or three weeks after I first saw Mrs. Brooks, because——

Q. And where was the blood test taken? [368]

A. That was taken—the blood itself was taken in my laboratory by one of my nurses at the time.

Q. And then what did you do with the blood?

A. We sent that, I am quite sure, to the local Health Department, which is an excellent laboratory because they do a lot of the tests on the inmates at the penitentiary.

Q. And what was the result of that test, if you recall?  
A. Well, it was positive.

Q. When you say positive, what does that mean?

A. Well, that means that the person has syphilis.

Q. What happened then after you received this positive report, if anything?

A. I am just trying to think whether I told him first or told his wife. I am quite sure, because this

(Testimony of Miles H. Robinson.)

is my established policy, that I called him on the phone and told him personally, because I felt that it would be—that that is the right thing to do, really, with any disease, is to learn it directly from the doctor.

Q. And then what happened?

A. I immediately told him that our standard procedure was to immediately repeat the test. It is a very serious disease, it is very expensive to treat, and it is of great concern to the patient, and so we always repeat the test. [369]

Q. And was the test repeated?

A. Yes, and we always send it to another laboratory in case there could have been any mistake.

Q. And when was the second test taken?

A. Well, that is the odd thing here on the record. It shows it was taken May the 2nd, which was a month later, and that may really be the case. The weeks slipped by and it might have been a month before he would come in again and take it again. On the other hand, my girl may have just not distinguished, as she sometimes didn't do, in families, as to just which person had the test taken. But, in any case, we sent it off to the State laboratory and it came back positive.

Q. Did Mr. Brooks cheerfully co-operate with these tests?

A. Well, I am sorry to say he was rather unpleasant about the whole thing.

Q. What unpleasant happened?

(Testimony of Miles H. Robinson.)

A. Well, the first thing that happened was on the first test, the very day that that was taken, he had been kept waiting in the waiting room for what I understood to be about twenty minutes and he had made my secretary cry. Now, that is the only time that my secretary—she is a sensitive girl, Miss Betty Newell was her name then—but he was apparently so rude to her that she cried over this incident. [370]

Q. Was there any other unpleasantness?

A. Well, ever since the test came back positive, why, our relations were rather strained and he avoided me when I had to take care of Mrs. Brooks. That is about the size of it.

Q. To your knowledge, did Mr. Brooks undertake any treatments after the finding of the second positive Wasserman test?

A. No, that was the trouble. He refused to take any treatment and he even refused to have the spinal puncture, which I thought was just terrible carelessness.

Q. Dr. Robinson, did you have conversations with the defendant Tom Brooks concerning the letter which his daughter, Mrs. Edwards, had received from Mr. Fullerton of the medical bureau and the society?

A. Yes, I did.

Q. When did you first have a conversation with Mr. Brooks regarding that matter?

A. Well, that letter was—a copy of that letter was left on my desk on Saturday, September 30, 1950, and I had been trying to get in touch with the



(Testimony of Miles H. Robinson.)

family during the following week and by Saturday, a week later, I finally called Mr. Brooks on the telephone.

Q. Was this the first conversation you had with Mr. Brooks on this matter?

A. Yes, it was. [371]

Q. In this conversation that you had with Mr. Brooks, did you telephone him or did he telephone you?

A. I telephoned him.

Q. When did you telephone him?

A. I don't know just when that was. It was some time on Saturday. I was awfully busy at the time and I really don't know when it was.

Q. When you telephoned Mr. Brooks, just what did you do, Dr. Robinson?

A. Well, I asked him first——

Q. I mean when you placed the call, how did you place the call?

A. I telephoned. I looked up his number, I think, in the record here.

Q. And then what did you do?

A. I am not sure that I got him on the first call because they had moved around a great deal, and I think that they had moved to a new house, but I finally reached him on the phone.

Q. And when you say you reached him on the phone, what happened then? What happened at the time you reached him on the phone?

A. Well, I asked him about this complaint that his daughter had made.

Q. Did he answer the telephone himself? [372]



(Testimony of Miles H. Robinson.)

A. Well, I am not sure whether he did or not.

Q. But he finally did come on the wire?

A. Yes, he did.

Q. Had you had any prior telephone conversations with Mr. Brooks?      A. No, I had not.

Q. You testified a moment ago you may have talked to him about his Wasserman test?

A. Oh, yes, I am quite sure I did.

Q. And had you talked with him on other occasions?

A. Yes, I had talked to him at home on, I would say, numerous occasions.

Q. Did Mr. Brooks have, shall we say, a distinctive manner of speech?

A. Yes, he did. He has a very strong accent which, well, is really unmistakable.

Q. And the person who talked with you on the telephone when you called Mr. Brooks was the man with whom you had talked before and known to be Mr. Brooks?

A. Oh, yes; there is no question about that.

Q. Well, then, what did you say to him and what did he say to you?

A. Well, I asked him about this complaint that his daughter had made against me.

Q. What was the substance of your request for information? [373]

A. Well, I asked him why the complaint had been made and told him that I felt rather upset about it, it made trouble for me in the society and that I felt that it was very unfair on the part of

(Testimony of Miles H. Robinson.)

them to do such a thing in view of all that I had done for his family.

Q. And what did he say to you, if you recall, if anything?

A. He at first spoke as if he didn't know anything about the complaint, and then he took a rather airy attitude and he said——

Mr. Tuttle: Doctor, I didn't understand what kind of an attitude.

The Court: Airy.

A. And said——

Q. (By Mr. Sembower): What did you mean by the word "airy"? That may not be understood by everyone, Doctor.

A. Well, I felt it was rather patronizing at the time. And he said, "I have a daughter in Spokane and she went to a doctor and he treated her for quite a long time and ran up quite a big bill, and then the doctor voluntarily said that he had made a mistake in the diagnosis of the treatment of this daughter," and Tom Brooks said to me, he said, "I told my daughter not to pay that bill," and he implied clearly to me that he felt that he had a perfect right to tell his daughters not to pay medical bills and gave me clearly to understand that he had [374] given his approval to Mrs. Edwards to make this complaint.

That was entirely reasonable to me because Mrs. Edwards was a very shy——

The Court: I don't think the witness should give

(Testimony of Miles H. Robinson.)

him reasons. You are inquiring about what the conversation was.

Mr. Sembower: That's right.

Q. What did you then say to Mr. Brooks?

A. The next thing I said to him was that, "I think it is time that you come in and settle this problem about your disease." I said, "It has gone on for a long time. It is really a responsibility that is on my shoulders. If you come down with something much more serious in the way of syphilis because you haven't been treated with penicillin, I will be held responsible, and I think that you should come into the office and we will run the spinal puncture and give you the treatment that very likely you should have."

Q. What further then was said by you to him or him to you in this conversation, if anything?

A. Well, I said further to him this, I said, "If you are going to come in and if I am going to handle your condition, we have got to have a decent basis of co-operation, and this letter business is a very troublesome thing. Your daughter told me that when she gets this letter, [375] she is going to show it to me. A week has gone by and they are giving me this tale about how they never get their mail for a solid week, and I am having trouble with the medical bureau and I think there is just something afoot here and I expect you to make a clean breast of what is going on, and if you expect me to treat you, I expect you when you come in to bring this

(Testimony of Miles H. Robinson.)

letter with you," and that was as far as we got on that.

Q. What did he say to you, if anything, and if you recall?

A. Well, when that was brought up, he was getting a little crusty by then, and he said, "That is none of my business," and he says, "Besides, I don't think I have got it, anyway, syphilis. I don't think I have got the disease, syphilis, anyway, because I had a negative Wasserman when I came in the country two years ago."

Well, that was a real shocker to me and I didn't know what to say at that because that altered the entire situation about his disease.

Q. Well, now, did you say anything further to him at this time?

A. No, that was all of our conversation.

Q. And he said nothing to you? A. No.

Q. Nothing further. Well, now, Dr. Robinson, what significance did the statement by Mr. Brooks that he had had a [376] negative Wasserman when he came into the country have for you as the physician of this family?

A. Well, it just meant one thing, it meant that his disease was quite possibly infectious and contagious.

Q. How is that?

A. Well, when syphilis is an old case, anything over about three or four years, it becomes automatically noninfectious so far as giving it to somebody by personal contact, such as kissing or from



(Testimony of Miles H. Robinson.)

a towel or something like that. It is still in the blood and you can get it by a transfusion, which, incidentally, was something in Walla Walla at that time, that they often gave transfusions without a routine Wasserman, so a man could have an old syphilis and it can be given by transfusion even though he has no active symptoms. However, if it is under two or three years' duration, there are two stages when syphilis is contagious by contact. One is within the first two or three months when the primary lesion on the skin is just alive with the spirochetes, and the second time is when the secondary manifestations come out on the skin and in the mouth, and at that time it is very easy to catch the syphilis from anybody who has got it, and, of course, you never know you have caught it because the thing is so insidious, it slips in, and all that happens is that ten years later your heart goes to [377] pieces and you suddenly discover on the autopsy table that the man is loaded with the disease.

Q. Now, in the light, then, of your comprehension of this disease, tell the Court what significance the information you had just received from Tom Brooks had for you.

A. Well, the first thing is that the man is contagious. You have to assume that. Therefore, he should by all means have treatment right away because penicillin sterilizes the condition and renders a man non-infectious in a matter of days.

So I could perfectly believe what he told me,



(Testimony of Miles H. Robinson.)

that he had had a negative Wasserman when he came into the country. It never occurred to me before because, obviously, his wife's disease was an old disease. But I realized then that they don't let you in the country if you have a positive Wasserman, so I realized then that I had something, a problem here, which was a lot more serious than I had realized.

Q. What did you next do then in connection with this man?

A. Well, I talked it over with my wife——

Q. Well, now, Dr. Robinson, aside from that, did you have further conversations with Tom Brooks in order to cover this matter?

A. Yes, I called him up the next morning, which was a Sunday, and I said, "I have been thinking"—— [378]

Q. Did you call the same telephone that you had called before?           A. Yes.

Q. The day before. And when the voice came on the wire, did you recognize it as that of Tom Brooks'?           A. Oh, yes.

Q. Well, then, what did he say to you and what did you say to him?

A. Well, I told him that I had been thinking over what he had said about the fact that he had had a negative Wasserman, and I said in view of that—— then I explained to him that that meant it was quite likely contagious and treatment was imperative. I said, "In view of that, I can't temporize or go along any longer." I said, "We have fooled around with

(Testimony of Miles H. Robinson.)

this for quite a few months and you will either have to come in and take treatment or else I have got to get out of the case."

Q. And what did he say to you?

A. Well, he pretty well blew up. The thing I remember particularly that he said was, "Well, you have been experimenting on my wife and giving her other medicines which have made her sick," and it was just sort of a flash remark he made to me, but that really did annoy me a lot. And I said, "Well, I am through and I am going to turn you over to the Health Department and I am [379] sorry but there is just no other situation I can do, because if this thing spreads, I will be under criticism for not having controlled it. So you will have to take it to the Health Department and let them worry about it."

Q. Let me ask you, Dr. Robinson, whether you in fact had experimented on Mrs. Brooks?

A. Oh, no. No, I think what he had in mind——

Q. I really don't ask you to speculate on what he had in mind.

Mr. Tuttle: If the Court please, I would like counsel to let his witness answer the questions. When he started to make an answer——

Mr. Sembower: If counsel has no objection, your Honor, I don't believe the witness under the rules could testify to that, but I have no objection to it.

The Court: Well, you may answer the question if you wish.

A. I think what he had in mind was that after

(Testimony of Miles H. Robinson.)

we had finished a thorough course of penicillin and we had had some improvement in the paralysis of this foot, we were not getting a continued improvement and the next thing to do was to try somewhat more drastic treatment, and so I decided to give her the thoroughly approved and accepted treatment of tryparsamide, which is a pentavalent arsenical compound that has been the standby [380] in neurosyphilis before the days of penicillin, so I gave her one or two injections of that, but she did not tolerate that medicine very well. It made her a little bit nauseated and sick. That was no reflection on me, because a lot of people can't stand the arsenicals, and you try them, if they don't work well, you quit, and that is just what I did; we stopped it immediately. And I forget whether we went back to some more penicillin for a while or not, but that was not too long before all this trouble developed.

Q. Well, then, Dr. Robinson, did you have any further conversations with Mr. Tom Brooks about this matter?      A. Yes, I did.

Q. When next did you have a conversation with him?

A. Well, he called me back in about twenty-five minutes.

Q. The same day?

A. The same day. And without any preliminaries at all, he said, "You threatened me to expose my disease," and he said, "Would you put that threat in writing?"

Well, I was flabbergasted.

(Testimony of Miles H. Robinson.)

Q. What did you say to him then?

A. I hardly knew what to say. I said, "Well, that is foolish." And he was saying this almost shouting over the 'phone, and I thought, well, he is performing for somebody else in the room and I hung up on him just [381] about then. I just realized that the man was extremely angry and that he was trying to put me in some kind of a trap.

Q. Well, Dr. Robinson, now——

Mr. Tuttle: Counsel, please let your witness answer his questions after you ask them.

The Court: Had you finished your answer?

A. Yes, sir; I really had nothing else to say.

The Court: All right.

Mr. Sembower: Your Honor, I am not trying to cut off my witness. He doesn't understand the rules of evidence and he frequently departs from them.

The Court: I think you should permit him to answer as long as it is material.

Mr. Sembower: I don't want to impose upon the time of the court.

The Court: I stopped him awhile ago merely because I thought he was expressing an opinion and going outside the scope of the question, and I think that is proper to do that.

Mr. Sembower: I didn't want it to appear that I was cutting him off, but I don't want to impose upon the Court if the answers are not appropriate.

The Court: Yes, all right.

Q. (By Mr. Sembower): Dr. Robinson, I neglected to ask you a moment ago when you first



(Testimony of Miles H. Robinson.)

talked with Mr. Tom Brooks [382] in the afternoon of Saturday, was anyone present at your end of the line who overheard your conversation?

A. My wife was present Sunday morning during both conversations.

Q. Was anyone present at the one on Saturday?

A. I was just trying to think. I don't know, I just don't know. She may have been present, but I rather doubt it, because it was just a routine call to me on Saturday.

Q. But she was present on Sunday?

A. Yes, because we were very concerned.

Q. Where was that call made from? Where did you make your call and where did you receive the call from Tom Brooks? Where were you at that time?

A. That was in our home. [383]

\* \* \*

Q. (By Mr. Sembower): Dr. Robinson, this letter states:

“Dear Mr. and Mrs. Brooks:

“It is with regret that I find it impossible to continue my medical service to you. In view of Mr. Brooks' persistent refusal to take treatment, my reputation is bound to suffer it, as I think likely, he sooner or later comes down with general paresis. Furthermore, his highly [390] unpleasant and belligerent attitude regarding the attack upon me which his son-in-law and daughter secretly arranged with a certain medical grievance committee has



(Testimony of Miles H. Robinson.)

completely destroyed my confidence in his integrity and fair dealing. In consequence, I see no prospect of maintaining a doctor-patient relationship with you or members of your family which will be satisfactory to all concerned.

“Please consider this letter written notice of my formal withdrawal from both your cases.”

The letter is dated October 10, 1950. Did you send this letter to the Brooks?      A. Yes.

Q. After you dispatched that letter to the Brooks, did you do anything further with reference to this matter? Did you hear my question?

A. I was waiting on his Honor.

The Court: Go ahead.

A. Yes, I called Dr. Sharp, the County Health Officer, and reported the cases of Mr. and Mrs. Brooks to him.

Q. About when did you call Dr. Sharp?

A. I think it was—well, I know it was the day before I wrote a letter to him, and I wrote him on the 12th, so [391] I called him, I think, on the 11th of October.

Q. And you called him at his office?

A. Yes.

Q. And you had talked with Dr. Sharp on previous occasions?      A. Yes, I had.

Q. So that you were able to recognize the voice of the person whom you telephoned as being that of Dr. Sharp?      A. Oh, yes.

Q. What did you say to Dr. Sharp and what did he say to you?

(Testimony of Miles H. Robinson.)

A. Well, I told him briefly of my problem with Mr. and Mrs. Brooks and that Mr. Brooks refused adequate tests and treatment; that he, to the best of my knowledge, was in a contagious condition and that I couldn't control the situation and, in accordance with the law, I was turning him over, or turning them over, to him. [392]

\* \* \*

Mr. Sembower: Exhibit No. 21 states:

“Dear Dr. Sharp:

“The name and address of the Brooks' daughter, which I was unable to give you yesterday, is Mrs. William Lepiane, 507 North Third Street, Walla Walla, Washington.

“The daughter who married recently and moved to Spokane is Enid, but I do not have her married surname or her address. [393]

“You have, I believe, the other daughter, a Mrs. Noel Edwards, 225 South East Sixth Street, College Place, Washington, and the Brooks' new address is 215 North Madison, Walla Walla.

“I am certainly glad to turn these people over to you for, as I mentioned yesterday, from the way Mr. Brooks has been acting lately and Mrs. Edwards' false statement of the other day that they all knew from the first about the Brooks parents having syphilis, I have no faith in anything they say. For all I know, Mr. Brooks' strongly positive Kahn may be a reinfection and he may be infectious.”

(Testimony of Miles H. Robinson.)

Q. Dr. Robinson, what is a Kahn, K-a-h-n?

A. That is a test similar to the Wasserman test, but it is easier to perform and it gives a quantitative measurement of how active the disease is; that is to say, it gives some evidence as to how active the disease is, but is not wholly reliable.

Q. Had you administered a Kahn test to Mr. Brooks?

A. As a matter of fact, of all those tests that were taken, some were run as Kahns and some were run as Wassermans, and either one is equally good from the standpoint of diagnosis.

Q. Did you have any conversations with reference to this [394] matter with the defendant Noel Edwards?

A. Yes. I talked to him twice, I believe.

Q. When was the first time that you talked with Mr. Edwards?

A. I talked to him over the phone, as I recall, about the end of the week after this letter from the society was sent out.

Q. Did you telephone him or did he telephone you?      A. I telephoned him.

Q. Did you recognize the voice of the person that you were talking with to be that of Mr. Edwards'?

A. Well, I didn't know his voice too well, but his familiarity with the subject we talked about left no doubt in my mind that it was Mr. Edwards.

Q. What did you say to Mr. Edwards in this conversation and what did he say to you?

(Testimony of Miles H. Robinson.)

A. Well, I told him substantially what I had told his wife and Mrs. Brooks earlier in the week. I discussed the complaint that his wife had made about the dollar and a half and pointed out the unfairness of it, and I also discussed the problem of his father-in-law taking treatment and I reminded him that his wife and Mrs. Brooks had said earlier in the week that when this letter came through, they would show me the letter and let me see it, and also that they would work on Mr. Brooks to have [395] him come in and take treatment.

Q. Then when did you talk with Mr. Edwards the second time?

A. Well, I talked to him very briefly on Monday following my last conversation with Tom Brooks.

Q. In what manner was that conversation conducted?

A. Well, I called him up and told him that I couldn't get anywhere with Mr. Brooks, that he refused to come in and was abusive to me and had accused me of experimenting on his wife, and that I was going to turn him over to the Health Department. Before I could say anything more, he interrupted and he said, "Well, you don't have to tell me anything about it. I already know he has got syphilis."

"Well," I said, "that is fine, you know the whole story, and it is up to you and the family to handle the problem and I am sorry I can't handle it." And that was the end of that conversation.

Q. Dr. Robinson, did you ever hear on any other



(Testimony of Miles H. Robinson.)

occasion than this telephone conversation or any other conversation the defendant Noel Edwards say that you had informed him or anyone else that Tom Brooks had syphilis?

A. Could you repeat that? I didn't quite get it.

Q. I will rephrase it. In any conversations that you have had with the defendant Noel Edwards, did he ever state that you had told him or told anyone else that Tom [396] Brooks had syphilis?

A. No, no, I heard him say just the opposite.

Q. On what occasion was that?

A. Well, at the hearing of the trustees on this controversy on November 21, 1950, I told essentially the situation to the trustees and said that I had never told Mr. Edwards or anyone else that Tom Brooks or his wife had syphilis, and he said, "I concede to that statement of Dr. Robinson," and that is all in the record.

Q. You mean the record of that hearing?

A. Of that hearing.

Q. Dr. Robinson, I hand you Plaintiff's Exhibit No. 504, the Principles of Medical Ethics of the American Medical Association, and ask you if you can find herein the Canon of Ethics which you followed in connection with the Brooks-Edwards matter you have been testifying about?

The Court: While the witness is looking for that, is there any reason why both these copies were put in, 21 and 22?

Mr. Sembower: I think it is an error, your Honor. I noticed——



(Testimony of Miles H. Robinson.)

The Court: They are both photostatic copies of the same document, except I notice one of them has a certification by Dr. Sharp, I suppose it is, that this is a copy of the letter sent to him. [397]

Mr. Sembower: Yes, that is the only difference.

The Court: Oh, I see. Well, all right, if they are the same. I just wanted to know.

A. The principle that I followed in handling the difficult problem of Mr. Brooks is stated very clearly in the Principles of Medical Ethics of the AMA, which is the law for the local society by their constitution. It is part of Chapter 2 on page 8, the heading, "Duties of Physicians to Their Patients," and the particular part is Section 2 on page 9, sub-heading "Patience, Delicacy and Secrecy."

Q. Will you please read it, Dr. Robinson?

A. It is a short paragraph and it states:

"Patience and delicacy should characterize the physician. Confidences concerning individual or domestic life entrusted by patients to a physician and defects in the disposition or character of patients observed during medical attendance should never be revealed unless the revelation is required by the laws of the state. Sometimes, however, a physician must determine whether his duty to society requires him to employ knowledge obtained through confidences entrusted to him as a physician, to protect a healthy person against a communicable disease to which he is about to be [398] exposed. In such instance, the physician should act as he would desire another to act toward one of his own family in like

(Testimony of Miles H. Robinson.)

circumstances. Before he determines his course, the physician should know the civil law of his commonwealth concerning privileged communications.”

Then further under the heading “Prognosis,” Section 3—this is continuing right on from the last thing I read:

“The physician should neither exaggerate nor minimize the gravity of a patient’s condition. He should assure himself that the patient’s relatives or his responsible friends have such knowledge of the patient’s condition as will serve the best interests of the patient and the family.”

I did not feel that Tom Brooks was acting in a responsible manner and the only other member of the family that seemed to me to be responsible was Mr. Edwards, and I felt that he should know that his father-in-law had a serious disease, but I did not feel it was incumbent on me to tell him what the disease was. I probably had the right or the duty to do so, but I didn’t feel it was necessary and I never told him. [399]

\* \* \*

Q. Dr. Robinson, did you have at about this time a conversation relative to the Brooks-Edwards matter with the defendant, Dr. Pratt? A. Yes.

Q. When did that conversation take place?

A. That was Friday, the 13th, in October, 1950.

Q. And where did it occur?

A. In Dr. Pratt’s office.

Q. Who was present? [402]

(Testimony of Miles H. Robinson.)

A. Just Dr. Pratt and myself.

Q. And how did the conversation come to take place? A. He called me in his office.

Q. And after he called you to his office, what did you do?

A. Well, I sat down and he started to talk.

Q. What did Dr. Pratt say to you and what did you say to Dr. Pratt?

A. Well, he said he had heard about this controversy—I don't know just what he said—he heard about the trouble and he first made some remark, derogatory remarks, about Tom Brooks. He said he was arrogant and hard to get along with and that he had had some members of the family as patients.

Then I told him the whole story and I said, "I feel that the only thing I could do was to report Mr. and Mrs. Brooks to the Health Department," and he said, "Yes, that is the only thing you could do."

Then he got down to the business of the meeting, you might say, and he said, "Now you are making an awful big stir about this grievance committee," and I admitted that I was very strongly opposed to it and told him at great length how I thought it was undemocratic and un-American, and so on.

"Well," he said, "I don't know just"—he didn't approve or disapprove on that, but he said, "Tom Brooks [403] has signed affidavits against you and he is going to sue."

And I said, "Well, that doesn't mean anything

(Testimony of Miles H. Robinson.)

to me. I have done what I consider my duty by the man and the family and it doesn't worry me at all."

"Well," he said, "here is the thing: Unless you stop your campaign against this grievance committee, the society is going to back Brooks in this lawsuit against you, and my advice to you would be to lay low and just let the whole thing blow over."

"Well," I said, "I just couldn't do that; that they had set a precedent of telling my patients not to pay my bills without any consultation of the patient with me or any real decent effort to go into the matter, and that they might write another patient of mine next week or next month and tell them not to pay a bill for \$150.00."

Well, he gave me then the standard talk about public relations and all that. And, oh, yes, then he said, "Now, look, we are not really after you. This is a trivial affair and we want to use this grievance committee against other doctors in the town and you are holding the whole thing up. Now, can't you just quit?"

And I didn't like that idea and I told him that we had perfectly good procedures in the constitution and [404] bylaws to handle any unethical behavior and we just—and that was the end of the conversation.

It was quite a long conversation and he expressed admiration for my view except as far as the grievance committee. He said, "We've just got to have that thing going."

Q. Did he say anything, Dr. Robinson, about



(Testimony of Miles H. Robinson.)

whether your efforts in connection with the grievance committee were futile or would be fruitful or anything along that line, if you recall?

A. Well, he said, "You will never succeed." He said, "They are going to have it and all you are going to do is get yourself in trouble."

Q. Did he say anything to you, Dr. Robinson, about Mr. Brooks signing an affidavit?

A. Yes, he did. I didn't know what he meant exactly and he wasn't prepared to tell me. I tried to pry out of him, for example, who was on this secret committee besides Dr. Stevens and I remember distinctly what he told me. He said, "Oh, they are the same as the Board of Trustees of the society."

And I don't know what my reaction was to that, but that is what he told me at the time. What I was thinking of was that later when I learned that they were not the trustees of the society, it greatly decreased my respect [405] for Dr. Pratt, who had told me that.

Q. Dr. Robinson, did he say anything to you about a complaint having been filed against you by Mr. Brooks before that same grievance committee?

A. No, no, he said absolutely nothing about any complaint to the society. All he said was that Brooks is going to sue and his signed affidavit is in preparation for that.

Q. Did Dr. Pratt in this conversation say anything to you about functioning as an arbitrator or conducting an arbitration of any kind?



(Testimony of Miles H. Robinson.)

A. Well, the whole significance of our talk was that he was taking it upon himself to make a deal: I leave the grievance committee alone and the society will call off Tom Brooks, or not push Tom Brooks. It was more or less the same thing. He made that very clear to me.

Mr. Sembower: I have in my hand Plaintiff's Exhibit 97 for identification, purporting to be the transcript of a hearing before the grievance committee of the Washington State Medical Association in the Marcus Whitman Hotel, April 22, 1951, and ask that it be admitted in evidence.

The Court: 97 is not correctly described on my list, if that is what it is, because it is listed here as a hearing before the grievance committee of the Walla Walla Medical Society. [406]

The Clerk: It should be the Washington State, your Honor.

The Court: Is that 97?

The Clerk: Yes, it is 97. It should be before the Washington State Medical Association.

The Court: I will just put down on this copy "Washington State."

The Clerk: Shall I admit it?

The Court: Yes, it will be admitted. That is number 1.

(Whereupon, the said document was admitted in evidence as Plaintiff's Exhibit No. 97.)

Mr. Sembower: Turning to page 51 of the said

(Testimony of Miles H. Robinson.)

exhibit 97, I read from the testimony of Dr. Yengling:

“Throughout this entire episode, every member of the medical society has tried personally to cease and desist from saying anything. Finally, I went to his close friend, Dr. Wallace Pratt, and had a long talk with him, and he wouldn’t arbitrate and he tried to get him to settle and he wouldn’t arbitrate in any way whatever.”

Q. Dr. Robinson, were you in attendance at the hearing for which this was a transcript, purported to be a transcript?           A. No, I was not.

Q. Referring to the secret grievance committee, Dr. Robinson, [407] at or about this time did you take steps to cause the local medical society to consider the wisdom of having such a committee?

A. Yes, I did.

Q. What were those steps, or perhaps I should ask, what was the first step?

A. Well, the first step was when I got up in the regular meeting of September 25th, I think it was, and said that I thought that a secret committee was a bad thing generally. And then——

Q. Did you at that time make any motion or take any concrete action of any kind?

A. No, I didn’t. Quite a few of the men agreed with me and I felt that the thing would probably die down.

Q. What would be then the next step that you took?

A. Well, after I talked to Dr. Pratt and he said that it was either I give up my objection to this

(Testimony of Miles H. Robinson.)

secret committee or they would, in effect, have Tom Brooks sue me, I felt that I would go to the membership, go to the general membership of the society. So I prepared a letter and had my secretary mimeograph it to all the members of the society, and I described how this committee violated the constitution and bylaws of the society and what an evil thing I thought it was, and I said that in order to do something about this, I think [408] we should have a special meeting, and then I more or less quoted the constitution and bylaws, which state that in order to have a special meeting, you have to get a certain number of signatures agreeing to it of the members. I think it was nine signatures.

So I sent this letter out to all the members of the society and along with it I had another sheet that had a place for them to sign their names that they agreed——

Mr. Kimball: Wouldn't the letter possibly be the best evidence of this?

The Court: Yes, I should think so.

Mr. Sembower: I have in my hand Plaintiff's Exhibit No. 35 for identification, purporting to be a photostatic copy of a letter from Miles H. Robinson, dated November 3rd, 1950, addressed to "Dear Doctor," and ask that it be admitted in evidence.

The Court: It will be admitted.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 35.)

Mr. Sembower: Reading from Plaintiff's Exhibit No. 35, dated November 3rd, 1950:

(Testimony of Miles H. Robinson.)

“Dear Doctor:

“The object of the letters which I sent you on October 12th and November 1st has been to [409] point out the dangerous authority which our grievance committee has assumed and to secure restitution for its unjust action against me. I am more interested in the principle at stake than in the damage which has been done to my business and to my reputation with the public, despite the fact that I seem to have been a special target for the grievance committee.

“In the last four months, its weighty deliberations have produced action only against two other members of the society. Nevertheless, the factor of time enters into this situation. The longer the Edwards family remain secure in their knowledge that I have been officially reprimanded, the more opportunity is given them to spread this knowledge among their acquaintances and multiply the injury to me.

“Obvious to anyone is the fact that an official member of the society would scarcely pounce on a member over a matter of \$1.50 were it not exceedingly anxious to exhibit its general disapproval of the member's conduct.

“For the reason, therefore, that time multiplies the injury and because the unconstitutional procedures of our grievance committee imperil [410] the security of any of us who should happen to arouse its displeasure, is it justifiable to hold a spe-



(Testimony of Miles H. Robinson.)

cial meeting of the society? In such meeting, a vote could be taken authorizing the Board of Trustees to write a letter to the Edwards which would at least put a stop to further unfavorable publicity to me.

“The charges which I intend to make against the responsible members of the grievance committee will be brought in the way set forth in our constitution. As a result of a renewed interest in our constitution, I think I understand the procedure which should be followed.

“In order to hold a special meeting of the society, request for same by a number of the members is required. Enclosed is a brief request form. I would appreciate it very much if you would sign this and return to me in the enclosed envelope.

“Sincerely yours,

“/s/ M. H. ROBINSON, M.D.,

“M. H. ROBINSON.”

And the second page reads:

“November, 1950.

“To the Board of Trustees, Walla Walla [411] Valley Medical Society:

“I hereby request that a special meeting of the Walla Walla Valley Medical Society be held.”

And a blank is there provided for signature.

I hold in my hand also Plaintiff's Exhibit No. 20 for identification, purporting to be a letter dated October 12, 1950, from M. H. Robinson, M.D., ad-



(Testimony of Miles H. Robinson.)

dressed to "Dear Doctor," and ask that it be admitted in evidence.

The Court: It will be admitted.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 20.)

Q. (By Mr. Sembower): I ask you, Dr. Robinson, if Plaintiff's Exhibit No. 20, which I hand you, is the letter dated October 12, 1950, to which you referred in Exhibit 35 dated November 3, 1950, which I have just read? A. Yes.

Mr. Sembower: I have in my hand Plaintiff's Exhibit No. 33 for identification, purporting to be a mimeographed copy of a letter November 1, 1950, from M. H. Robinson, M.D., addressed to "Dear Doctor," and ask that it be admitted in evidence.

The Court: It is admitted. [412]

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 33.)

Mr. Kimball: Is that 33?

The Court: 33, yes.

Mr. Sembower: 33.

Q. I hand you Plaintiff's Exhibit No. 33 and ask you, Dr. Robinson, if this is the other letter referred to in your Letter of November 3rd, Exhibit No. 35, which I just read? A. Yes.

Q. Did you receive any responses to this letter which you sent out to the members of the society?

A. Yes, I did.

Q. What took place?

(Testimony of Miles H. Robinson.)

A. Well, very shortly thereafter, I received back, I think, it was about eleven signatures. Anyhow, it was more than I needed for us to call a special meeting. And, in fact, I received a couple of letters in addition asking or commenting on the request.

Q. Dr. Robinson, during the pendency of this move you had initiated to hold a special meeting of the society, did you take any other action with respect to the grievance committee?

A. I think somewhere along in there I wrote the AMA about it.

Q. I will ask you about that in a moment. [413]

Mr. Sembower: But I have here Plaintiff's Exhibit No. 37 for identification, purporting to be a photostatic copy of a letter dated November 7, 1950, signed Miles H. Robinson, M.D., to the Board of Trustees of the Walla Walla Valley Medical Society, and ask that it be admitted in evidence.

The Court: What number is that?

The Clerk: 37.

The Court: It will be admitted.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 37.)

Q. (By Mr. Sembower): Dr. Robinson, I hand you Plaintiff's Exhibit 37 and ask you if you have seen that before? A. Yes.

Q. What is that, Dr. Robinson?

A. Well, that is a letter with which I filed formal charges against the secret grievance committee with the Walla Walla Society.

(Testimony of Miles H. Robinson.)

Q. A moment ago I asked you if you had taken any other steps with reference to the grievance committee. Was this such a step, Dr. Robinson?

A. Yes, that was.

Q. Was this an alternative step? A parallel step, or how did this fit in with your call for the special meeting?

A. Well, I think you would call it a parallel step. [414]

Q. Were you following, say, two parallel lines of appeal, shall we say, with respect to the grievance committee and how it was constituted?

A. Yes, I was. I didn't know how far I would get with the whole society because the officers pretty much had run things in the society and I thought that in any case I should make a formal appeal to the trustees, as long as I had a complaint, I should make a proper complaint to the society.

Mr. Sembower: Reading from Exhibit 37, it states in the first paragraph:

"According to the procedure established by the constitution and bylaws of our society, I submit to you herewith my formal complaint against the unknown members of our secret grievance committee and C. E. Fullerton, responsible for the injurious letter which Fullerton sent to the father, Noel Edwards, of my patient, Noline Edwards, on September 30, 1950. In this complaint, I will show that the responsible members of this secret grievance committee have in their official capacity disciplined me by means of the aforesaid letter and

(Testimony of Miles H. Robinson.)

that this action of theirs was uncalled for, unjust, unethical, malicious, and [415] in flagrant violation of our constitution and bylaws.

“In view of the fact that it is now five weeks since this letter was sent to a member of the public, during which time nothing has been done to counteract the spreading impression that I have been officially reprimanded by the society, I respectfully request that you take action as soon as possible.”

Your Honor, I am a little in a quandary because the letter is lengthy and if we had a jury I would, of course, read it, but I always have in my mind that the Court does have an opportunity to read this and it might be consuming unnecessary time, so I believe I will not read it at this time.

The Court: Well, I suggest that you call to my attention only such parts as are necessary to enable me to keep the continuity of the testimony and to follow it.

Mr. Sembower: Thank you.

The Court: I don't require that all of it be read. You just use your own judgment about that.

Mr. Sembower: Thank you.

Q. Dr. Robinson, by this language which is contained in the letter of November 7, 1950, did you mean it to constitute the filing of a formal complaint? [416]

A. Oh, yes.

Mr. Sembower: I have in my hand Plaintiff's Exhibit No. 36 for identification, purporting to be a photostatic copy of a letter from Robert M. Bond, M.D., to Miles H. Robinson, M.D., and also photo-

(Testimony of Miles H. Robinson.)

static copies of short forms, all dated November in blank, November, 1950, addressed to the Board of Trustees of the Walla Walla Valley Medical Society, stating:

“I hereby request that a special meeting of the Walla Walla Valley Medical Society be held.”

It is signed by W. G. Cowan, Harlan P. Kahler, J. T. Rooks, Ed L. (Elmer) Hill, Marshall A. Rockwell—I have difficulty making out this name. I am able to read the signature of I. C. Bohlman, Robert M. Bond and L. C. Folkes.

Q. And I ask you, Dr. Robinson, if you have ever seen the originals of those papers before?

A. Yes.

Q. Are you familiar with the signatures on the documents?

A. Well, I am familiar with all the signatures except the out-of-town doctors, and the one that I believe you may have had trouble reading is Frederick Davis, M.D.

Mr. Kimball: If the Court please, we haven't questioned the signatures on this document.

The Court: I beg your pardon?

Mr. Kimball: We haven't questioned the signatures. [417]

The Court: Oh.

Mr. Sembower: I would like, however, to bring the names out since I was unable to read them.

Mr. Kimball: Excuse me, counsel.

Mr. Sembower: Yes, there were three I couldn't read.



(Testimony of Miles H. Robinson.)

A. C. J. Johannesson and Dr. Rogers.

Q. What are these documents, Dr. Robinson?

A. Well, they are authority to me, I guess, to hold this special meeting.

Q. That is, they are favorable returns to your letter sent to the members of the society suggesting a special meeting?

A. Yes.

Q. If there was a requisite number of signatories for such a request?

A. Yes.

Mr. Sembower: I ask that Plaintiff's Exhibit No. 36 be admitted in evidence.

Mr. Kimball: No objection.

The Court: It will be admitted, then.

(Whereupon, the said document was admitted in evidence as Plaintiff's Exhibit No. 36.)

Q. (By Mr. Sembower): Dr. Robinson, what happened next with respect to your efforts to call a special meeting of the [418] society?

A. I went to see Dr. Page.

Q. That is, the defendant Dr. Sam Page?

A. Yes, he was president of the society.

Q. Where did you converse with Dr. Page about it?

A. I can't remember too well. It was probably at his office.

Q. Do you remember about when it occurred, this conversation occurred?

A. Oh, shortly after these letters came in. I suppose it was around the—well, the last one there

(Testimony of Miles H. Robinson.)

is dated November 7th. I probably went to see him about the 8th or the 9th.

Q. And were there any other persons present during this conversation?

A. Well, no one else was in on the conversation.

Q. What did you say to Dr. Page and what did he say to you?

A. Well, I showed him the signatures and said that I understood that I then had enough to authorize that a special meeting be called, and he looked at them and agreed and said he would arrange it.

Q. Did he say when he would arrange it?

A. No, he said nothing about that.

Q. During the period of your efforts to have the society review the grievance committee, did you have any knowledge [419] whatever of the Brooks' complaint against you?

A. You mean did I know about the——

Q. Did you know what was pending at that time?

A. Well, I had no idea. I didn't even know Brooks had made a complaint.

Q. When did you first know about the Brooks' complaint against you?

A. The first I knew about it was when I got Dr. Page's letter of November the 10th enclosing a copy of the Brooks' complaint. It might have been the 11th.

Mr. Sembower: I find in Defendants' Exhibit 447, which is the minute book, a loose leaf insert reading as follows:

(Testimony of Miles H. Robinson.)

“Notice of Special Meeting:

“Pursuant to the provisions of Chapter III, Section 2, of the bylaws of the Walla Walla Valley Medical Society, I, Sam R. Page, President, being in receipt of a written request from nine members, herewith call a special meeting of the entire membership to be held November 20, 1950, at 8 p.m., the place of the meeting to be the nurses’ classroom at St. Mary’s Hospital, Walla Walla, Washington, the object of the meeting to be (1) to decide whether or not the grievance committee shall be continued; (2) to decide [420] whether or not the board of trustees should write a letter to Noel Edwards stating that the grievance committee exceeded its authority in its letter of September 30, 1950, to him about Dr. Robinson and asking that he disregard this letter.

“/s/ SAM R. PAGE, M.D.,

“President.”

Q. Dr. Robinson, did Dr. Page discuss with you in advance the phrasing of this call for the special meeting?

A. As far as I recall, he told me to compose the notice and I think that is, or most of it, is my language.

Q. That is substantially what you prepared yourself for it?      A. Yes.

The Court: I just want to mention this, Mr. Sembower, that you have read from a Defendants’ identification here, or Exhibit for identification to

(Testimony of Miles H. Robinson.)

which you have reserved all objections, and your reading a part of it into the record would probably constitute a waiver of your objection.

Mr. Sembower: Yes, we have waived our objection to this exhibit.

The Court: Very well, I just wanted to call it to your attention.

Mr. Sembower: It is a loose leaf book which we merely wanted to look through and which we did and found all the [421] pages present.

Q. Dr. Robinson, was there any discussion between you and Dr. Page as to the date when this meeting, this special meeting, would be held?

A. I don't remember any discussion beyond that he said he would try to have it as soon as he could.

Q. Who selected the date, if you recall?

A. Well, I assume Dr. Page did.

Q. Do you remember when you discussed with Dr. Page the phraseology of this notice and the setting of that date?

A. I don't remember exactly when we did discuss it. At this time, I can't think whether it was before the letter of November 10th he sent me or afterwards.

Q. Did you know at the time that this notice was sent out that a meeting was to be held on November 21st, one day later, at which a hearing was to be held of the purported complaint by Brooks?

A. I just really can't say.

Q. Well, of course, if this meeting was held, if you discussed this before November the 10th, you



(Testimony of Miles H. Robinson.)

would not know because you testified that was the only time and you can't recall when you discussed this.

A. I just can't remember exactly the timing there.

Q. Well, Dr. Robinson, a meeting was held of the society on November the 9th, 1950, was there not? [422]

A. Well, that might have been a trustees' meeting.

Q. Do you remember attending a meeting of the society on November the 9th, 1950?

A. Well, I don't remember, but I would have to look at the minutes to be sure. On thinking this over, Mr. Sembower, I believe I do recall now when the notice of the special meeting came out. It came out not very long before the special meeting, I would say not more than four or five days, is my recollection, before the special meeting. The reason I remember that is I didn't have much time to prepare for the special meeting and I remember at the time being struck by the fact that this trustees' meeting to hear the Brooks' charge came to me in that letter of November the 10th. No, I guess I really can't say. There was something about——

Q. I don't want you——

A. ——about the two being right together.

Q. ——to dredge your memory too deeply.

I will ask you this, Dr. Robinson: Reading the minutes of the society, Walla Walla Valley County Medical Society, Defendants' Exhibit 447, I find



(Testimony of Miles H. Robinson.)

minutes for a regular meeting, monthly meeting of the Walla Walla Valley Medical Society, held at the Grand Hotel:

“Thirty-six members were present at the meeting, which was preceded by the customary social [423] hour beginning at 6:30. The speaker of the evening was D. E. McConville, M.D., of Seattle, Washington. Dr. McConville spoke on the treatment of the more common fractures.

“President Sam R. Page announced the following nominating committee for 1950 officers. The meeting adjourned at 9:05.”

A. Oh, I remember that meeting very well because I knew Dr. McConville personally, had met him in Seattle, and I was at that meeting.

Q. Do you remember anything which took place after that meeting was completed?

Mr. Kimball: Mr. Sembower, would you give us the date of the meeting you are referring to?

Mr. Sembower: Yes, it is November 9th, 1950.

Mr. Kimball: The society meeting or trustees' meeting?

Mr. Sembower: Society meeting.

Mr. Rosling: A special trustees' meeting.

Mr. Sembower: No, society meeting.

Q. Do you know anything which occurred after that meeting was held?           A. Yes, I do.

Q. What was that?

A. Well, the meeting was over about 9 o'clock because Dr. [424] McConville had to catch the train back to Seattle that left around 9 o'clock, and I was

(Testimony of Miles H. Robinson.)

standing around outside—no, I was standing around in the main dining room of the Grand Hotel just chatting after the meeting at 9 o'clock. And during the meeting, toward the end of it, or practically at the end, there was an announcement that the trustees would meet right after the general meeting. So when our meeting was over, the general meeting was over, the trustees were called off in a little adjoining room that was used for cocktails before the society meeting and they went off in there and I was still talking out in the general group. Well, they weren't in there more than fifteen minutes and I was interested in their meeting, because after what Dr. Pratt had said on October the 13th and knowing that I had sent out this call for a special meeting on the 3rd of November, why, I figured that there probably was a little activity in the board of trustees of the society.

So they went in at 9 o'clock and they came right out at 9:15, and I looked at my watch at the time because I thought that was a pretty fast session, and I wondered just what was going on.

Mr. Sembower: Reading from Defendants' Exhibit 447, the minutes of the special meeting of the board of trustees of the Walla Walla Valley Medical Society held at the Grand [425] Hotel, Thursday, November 9, 1950, at 9:15 p.m.:

"Members present: Doctors Page, Tompkins, Keyes, Ralston. Others present: Doctors Lyman, Johannesson, Stevens, Judd Kimball, attorney for the society; C. E. Fullerton, executive secretary.

(Testimony of Miles H. Robinson.)

“Following explanation by the executive secretary that the bonding company had advised that Mr. A. D. Bowery was no longer covered by the blanket fidelity bond due to his resignation as a full-time employee, Dr. Tompkins moved, seconded by Dr. Ralston, that the authority previously given to Mr. Bowery to sign checks on behalf of the society be withdrawn. Carried.

“Attorney Kimball read to the board a complaint made by Thomas R. Brooks. After an extensive and complete discussion of the causes that led to the filing of the complaint, the following motion was made by Dr. Tompkins and seconded by Dr. Ralston:

“ ‘That an official meeting be held by the board of trustees of the society on the complaint of Mr. Brooks; that Dr. Robinson be served with a copy of the complaint, notified that the hearing is to be held, and requested to be present [426] to present his answer; that the meeting be held in the office of Dr. Ralston, November 21, 1950, at 8 p.m.’

“The motion, after being duly read by the secretary, was put to a vote and carried unanimously.

“Meeting adjourned.

“C. E. FULLERTON,

“Executive Secretary.”

Q. Dr. Robinson, did anybody coming out of the trustees' meeting or prior to the trustees' meeting tell you that there had been a complaint filed against you by Thomas Brooks?

(Testimony of Miles H. Robinson.)

A. Absolutely not.

Q. Well, Dr. Robinson, was the special meeting, which you had petitioned for and for which an announcement call was sent out for the meeting to be held November 20, 1950, held?

A. Yes, it was.

Q. On that date?

A. Yes, I think it was November 20th.

Q. And where was it held?

A. Well, I am quite sure it was held at St. Mary's in the classroom.

Q. As pursuant to the announcement. Who was in attendance, if you recall? [427]

The Court: I didn't understand where it was held.

Mr. Sembower: At St. Mary's Hospital.

The Court: St. Mary's Hospital, oh.

Mr. Sembower: Yes.

Q. Who was in attendance, if you recall? Not everyone by name, but approximately what was the attendance?

A. Well, the interesting thing about that was that we had on that night the largest attendance of members of the society that we had ever had in a business meeting of the society, as distinct from the meetings where lecturers came from out of town, and there were—well, there was everybody practically that I knew in the society was there, a total of about thirty men.

Mr. Sembower: Reading from the minutes of the special meeting of the Walla Walla Valley Med-



(Testimony of Miles H. Robinson.)

ical Society held at St. Mary's Hospital contained in Defendants' Exhibit 447 for Monday, November 20, 1950, at 8 p.m., I find the notation:

"Quorum being present, Dr. Page called the meeting to order at 8 p.m. and stated the purposes of the meeting.

"Dr. Robinson requested a change in the consideration of the order of the objects of the meeting. President Page asked whether or not there was any objection to the request. [428] Objection was entered by Dr. Stevens and the chair ruled the meeting would consider the objects of the meeting in order as stated in the call for the meeting.

"The chair then allowed Dr. Robinson the floor and Dr. Robinson stated his reason for requesting the meeting and his position in regard to the matters to be considered."

Q. Will you tell the Court what, in substance, you stated, Dr. Robinson, if you recall?

A. Well, it was my general position up 'til now that the committee was not only in violation of our constitution and bylaws and by-passed them, but that it was an un-American kind of a secret thing and that we already had perfectly adequate provisions in the constitution and bylaws for any complaint to be handled and there were two pages in the constitution and bylaws telling exactly how anybody could make a complaint, that the complaint would be handled by the trustees of the society, and I said that I felt that it was an honorable—it was a matter of prestige for any doctor to be a trustee



(Testimony of Miles H. Robinson.)

of the society, it helped his business to have that known, and that he should—and in return for that honor, he should be glad to handle any complaint that might come in according to the usual way, and further [429] that obviously, a busy and respected trustee of the society actively in practice wouldn't have any time for trivial complaints or complaints that might have been made out of jealousy or something like that, and that way the whole procedure could be kept clean; that that is what we had for forty or fifty years in Walla Walla and for a longer time than that all over the country. and I saw absolutely no reason for setting up a secret committee run by a layman who knew nothing about medicine and knew nothing about whether a doctor had done right for a patient or not.

Then I went into the matter of this letter to the Edwards and said I felt it was unfair and it caused so much friction between me and the families concerned, I had lost all seven patients that I had there who had brought me a modest income of some \$170 or \$180 over the past year or two, and I felt that the society should abrogate, or whatever you call it, it should take back its action against me on that matter.

Then I was very happy to find that there was a lot of support for me in the meeting and various men got up and said they agreed and—but there was, of course, strong arguments on the other side. Dr. Stevens got up and made what I thought was a rather rough speech on the subject. He volun-

(Testimony of Miles H. Robinson.)

tarily remarked that this was not a [430] gestapo, and that wasn't my term, that he said he didn't think it was a gestapo committee.

Well, then we took a vote finally and we came—I insisted on a secret ballot. I felt that was the only fair thing, so we had a secret ballot. The first secret ballot that we——

Q. May I read these minutes to you, Dr. Robinson, to see if they conform with your recollection?

I find in the minutes that Dr. Rooks moved, seconded by Dr. Kahler, that the grievance committee be discontinued. Do you recall that that occurred?

A. Yes, I do.

Q. (Reading):

“Dr. Stevens spoke on the motion explaining the reasons for the appointment of the committee and briefly outlined its methods of operation. At his request, the executive secretary read the motions authorizing the committee and the reasons for keeping secret the names thereof. Doctors Moore, Rockwell, Kahler, Holmes, Cranor, Tompkins, Rooks, Potts, Robinson, Keyes, and Karlson then spoke on the motion.”

Are those the remarks of Dr. Stevens that you have just now testified to?      A. Yes. [431]

Q. Then I find:

“Dr. Kahler moved, seconded by Dr. Tompkins, that the question before the meeting be voted on by ballot. The vote on the motion was 21 Yeas and 9 Nays, and the chair declared the motion carried.”

Do you recall that action?

(Testimony of Miles H. Robinson.) :

A. What was the motion for?

Q. That the matter be voted on by ballot.

A. Oh, yes, yes; we voted as to how we would vote.

Q. And that was to be a secret ballot, as to what it means?

A. Well, yes, any ballot in writing was secret.

Q. (Reading):

“The vote by ballot was then held on the original motion. Doctors Moore and Keyes acted as tellers. The vote was 14 Yeas and 15 Nays, and the chair declared the motion lost.”

Does that conform with your recollection of the meeting?

A. Yes, we lost by one vote the move to abolish this secret committee.

Q. (Reading):

“The chair then declared the second item on the call for the meeting was open for discussion. Dr. Robinson was allowed the floor and stated his objection to the letter of the grievance [432] committee to Mr. Noel Edwards and asked the Board of Trustees to write Mr. Edwards to the effect that the committee had exceeded its authority and that he was to disregard the letter of the committee. Doctors Stevens, Tompkins, Pratt and Kahler spoke on Dr. Robinson's remarks.

“At the request of Dr. Moore, the executive secretary explained the origination of the complaint, the details as to how it was handled, and his instructions from the chairman of the committee. Dr.

(Testimony of Miles H. Robinson.)

Lange spoke on the action of the board of trustees in upholding the action of the committee in the matter of the letter to Mr. Edwards.

“Dr. Robinson moved, seconded by Dr. Kahler, that the board of trustees be authorized to write a letter to Mr. Noel Edwards stating that the grievance committee had exceeded its authority in its letter to him of September 30, 1950, and asking that the letter to him be disregarded. Doctors Karlson, Tompkins, Lange, Cowan and Moore spoke on the motion. Dr. Moore moved, seconded by Dr. Kahler, that the original motion be amended as follows:

“‘That the grievance committee be [433] informed that the society feels the grievance committee exceeded its authority in writing to the complainant, especially without a meeting of the entire committee, and the complainant so informed, if the board of trustees feels it should be done.’

“Dr. Holmes moved, seconded by Dr. Cowan, an amendment to the amendment that the motion of Dr. Moore be amended by the addition of the wording, ‘provided such action is approved by the society’s counsel.’

“Dr. Tompkins moved, seconded by various members, to lay on the table the amendment to the amendment, and the original motion. The vote on the motion of Dr. Tompkins was 13 Yeas and 9 Nays and the chair declared the motion carried.

“It was then regularly moved and seconded the meeting adjourn. There were no objections and



(Testimony of Miles H. Robinson.)

the chair declared the meeting adjourned by consent, 10:15 p.m.

“/s/ C. E. FULLERTON,  
“Executive Secretary.”

The Court: The motion to lay on the table was carried, according to the minutes? [434]

Mr. Sembower: Apparently so, yes.

The Court: All right. The Court will take a ten-minute recess.

(Whereupon, a short recess was taken.)

Q. (By Mr. Sembower): Dr. Robinson, at the time that this meeting was being held, this special meeting of the 20th, to consider the propositions that you had petitioned for, did those who attended know that a meeting would be held the next night at which the Brooks' complaint, so-called, would be considered?

A. As far as I know, none of the members that attended the meeting I called knew about the meeting the next night except the officers and trustees who might know about the hearing they were going to hold the next night.

Q. Was any announcement made at this meeting that the matter was to be considered the next night?

A. Oh, no. All that I recall now was that I was unable to prepare very much for the meeting I called because the trustees' hearing of the complaint against me was due the very next night.

Q. You mean you were unable to prepare for



(Testimony of Miles H. Robinson.)

the meeting of the next night or the night of the 20th, or both?

A. Well, frankly, I didn't know what to do hardly, both coming at once, and so what with all the patients I was seeing anyhow, I couldn't prepare very well for either of [435] them.

Q. Did you ever have any conversation, Dr. Robinson, around about this time with the defendant Dr. Ralston relative to the extent of consideration given by the trustees to the Brooks' complaint?

A. Yes, I did.

Q. When did that conversation take place as nearly as you can remember?

A. Well, that was over the phone and——

Q. Did he call you or did you call him?

A. I called him.

Q. And you knew his voice? A. Oh, yes.

Q. From prior conversations. You knew you were talking to Dr. Ralston? A. Yes.

Q. Where were you when you made your telephone call?

A. I am not sure whether I was at home or at the office.

Q. Do you recall whether there was anyone else present when you placed your call?

A. No, I don't think so. The thing was this, as soon as I got Dr. Page's letter of November the 10th summoning me to this hearing, in a few hours I sat down and I called all the trustees of the society. I think that was five men. And I felt that it was a peremptory summons, handing [436] me a com-

(Testimony of Miles H. Robinson.)

plaint I had never seen and about something that had taken place over a month ago, and I thought it was proper to call on the trustees and ask them what it was about. So Ralston was one of the men I called.

Q. And what did you say to Mr. Ralston and what did he say to you, if you recall?

A. I don't remember exactly all the things that I said to him, because I had pretty much the same set of remarks for all the trustees, just asked them about it in general. But I remember one particular question that I did put to Dr. Ralston, I asked him how it was that the Brooks' complaint against me, which was made October 11th, took precedence over—no, how it was that the Brooks' complaint, which was made to the trustees in this meeting of November the 9th that we were just discussing, took precedence over my complaint to the trustees which I made in my letter of November 7th, two days before. I asked him that, since I made my complaint first, why shouldn't my complaint be heard first, and he said he didn't know why that was. And that was the extent of my conversation with Dr. Ralston.

Q. Did you call any other members of the trustees at or about this time?

A. Yes, I called most of them. I am trying to think what—yes, I talked to Dr. Keyes. [437]

Q. That is, in what manner did you talk with Dr. Keyes?

(Testimony of Miles H. Robinson.)

A. Well, in the same way, I called him by telephone.

Q. About when did that occur?

A. Well, it was on the same day that I called Dr. Ralston.

Q. And what did you say to Dr. Keyes and what did he say to you, if you recall?

A. Well, I made a note of it at the time, and—just trying to think what was the point brought up with him. Oh, yes, I remember. He was pretty breezy about it and said, “Well, if you lose this hearing with the trustees, why, you can appeal to the society,” I think he said, “and if you lose that, you can appeal to the state.”

That is all I remember at the moment of what he said.

Mr. Sembower: I have Plaintiff's Exhibit for identification No. 39, a letter dated November 10, 1950, signed by Sam R. Page, M.D., President, to Dr. Miles H. Robinson, and I ask that it be admitted in evidence.

Mr. Kimball: It has already been admitted.

Mr. Sembower: Oh, I'm sorry.

The Court: I think it is in.

Mr. Sembower: Yes.

Q. I ask you, Dr. Robinson, when, if you recall, you received this letter? [438]

A. I think this is one of the letters that was delivered to me personally by Mr. Fullerton in my office just as he delivered the letter of September 30th, a copy of the letter he sent to the Edwards.

(Testimony of Miles H. Robinson.)

The reason I think so is there was quite a bulky complaint of Mr. Brooks that came along with it and I just don't remember getting any big envelope.

Q. Was there any other enclosure besides the Brooks' statement?

A. No, I don't think so.

The Court: Has the witness answered when he received this? That was your question, wasn't it?

Mr. Sembower: I'm sorry.

Q. Do you remember when you received it?

A. Well, I think I got it the same day, on November 10th, or it could have been the 11th, but I am just not sure about that.

Q. Dr. Robinson, did you ever discuss the forthcoming meeting referred to in this letter, Exhibit No. 39, with Sam R. Page, one of the defendants in the case?

A. The only—yes, I did. I had two discussions with Dr. Page.

Q. When was the first of these?

A. There were either two discussions or else we talked about two things at the same time, and it was along [439] about in this time, as nearly as I can remember, and we were talking about the secret grievance committee. I was asking him——

Q. Do you remember where the discussion took place?      A. Yes, I was out at his house.

Q. Were there any other persons present at the time?

A. Well, I think—I know that I met Mrs. Page



(Testimony of Miles H. Robinson.)

but whether—well, we went into the living room and I have a feeling that she was in the room while we were talking, but I am not sure, she may have gone out to the kitchen. It was around supper time or the early evening.

Q. Had you asked to confer with him?

A. Yes, I told him that I would like to drop over and see him for a few minutes.

Q. And that was after you received this letter calling the meeting?

A. I think so.

Q. What did you say to Dr. Page and what did he say to you, if you recall?

A. Well, I made my standard question to him that I had been asking quite a few people, and that was who is on this secret grievance committee besides Dr. Stevens, and he wouldn't tell me, and so I said—I mean, he said the trustees had ruled that “we are not to tell.”

So I said, “Well, are you on it?” And I [440] always remember his answer, he said, “No, thank God.”

Then I asked him about this trustees' hearing that they were going to hold on me on the 21st of November referred to in this letter he wrote of November the 10th, and—I don't remember exactly what he said. It was something along the line of what Dr. Keyes said. “Oh, yes, yes; he said—well, I told him, I said, “I don't understand this, this complaint that you have made of Mr. Brooks. It is a long, rambling affair and he is accusing me of experimenting on his wife and it has got a lot of things



(Testimony of Miles H. Robinson.)

in there and he says I threatened him, and I have been trying to find out just what I am supposed to have violated." I said, "I don't see, I am willing to come to your hearing, but I would at least like to know what part of our ethics or our rules I have violated."

And I told him that the man was in a contagious condition and I had tried to get along with him and that he refused to take treatment or co-operate in any way and that I had turned him over to the Health Department and I said I didn't just see what I had done wrong.

And he said, "Well, we will have to hear the matter," and I said, "Well, I don't know if I am going to come to your hearing because it doesn't seem to me that it is set up in the right way. A man has got to [441] know what he is charged with before he is brought before the governing body."

"Well," he said, "if you don't come we will presume that you are guilty."

Well, that was the extent of our conversation.

Q. Did you attend the meeting?

A. Yes, I looked up in the constitution and by-laws and it says in there, it uses the word "complaint" instead of "charges," and I supposed that what Mr. Brooks signed could certainly be considered a complaint of some kind and the trustees, evidently, from the constitution had authority to call anybody upon a complaint, but it was for the society meeting that you had to have formal charges. If the society was going to hear the matter and con-

(Testimony of Miles H. Robinson.)

sider whether to discipline the doctor, then there had to be charges, the word "charges" was used, so I was mistaken there as to what was required for the trustees to hold a hearing and I acknowledged that later and said I would come.

Mr. Sembower: I have in my hand Plaintiff's Exhibit No. 17 for identification. It purports to be a carbon copy of a letter dated November 11, 1950, from Miles H. Robinson, M.D., to the Board of Trustees, Walla Walla Valley Medical Society. I ask that it be admitted in evidence.

Mr. Kimball: No objection. [442]

The Court: It will be admitted. [443]

\* \* \*

Q. Dr. Robinson, did you ever receive any replies from members of the trustees to this communication?

A. No reply whatever, either oral or written.

Q. Notwithstanding your statement here in this letter that you did not plan to attend the meeting, did you, nevertheless, attend the meeting?

A. Yes, I did. As I explained a moment ago, I saw that technically the constitution provides that the trustees can hold a hearing on a complaint without specifying charges.

Q. You refer in the exhibit 17 to your complaint against the grievance committee. Had that matter been finally disposed of by the special society meeting held on the night of the 20th, or did that continue as a complaint?

(Testimony of Miles H. Robinson.)

A. Well, the meeting of November 20th was called to [446] consider the grievance committee, but really had nothing to do with the formal charges that I filed in my letter of November 7th.

Q. That matter was still pending?

A. Yes, I had no answer from the trustees and they said nothing about it.

Q. Where was the meeting of November 21st, 1950, held, Dr. Robinson?

A. In Dr. Ralston's office.

Q. Do you recall who was present?

A. Yes, I do. Doctors Page, Ralston, Keyes. Tompkins and Lange, I believe. Then there were Mr. Brooks, Mr. and Mrs. Edwards, and Mr. Bill Lepiane, and then Mr. Fullerton was there and he went in the back room behind the waiting room where we held this meeting, and I understand he was in that back room all during the meeting taking notes of his own.

Q. What was the basis of that understanding, Dr. Robinson?

A. Well, Dr. Tompkins stopped me on the street some time, oh, a month or so after this hearing and said the transcript of this hearing—well, I think I stopped him or, anyhow, we met. I don't know who stopped who. And I said, "I got the transcript of this hearing, but I can't make head or tail out of it. It is all garbled up and sentences are cut off in the middle and they don't make [447] sense and I think it is a terrible thing."

Well, he said, "Mr. Fullerton was in the back

(Testimony of Miles H. Robinson.)

room listening to the proceedings," and I got the impression that he had a tape recorder back there. He didn't say he was taking notes, he spoke as if he was keeping track of it back there, and he said, Tompkins said to me, he said: "Tell you what you do now, you get together with Charlie Fullerton and Miss Curts and see if you can agree on fixing up this transcript so it is all right."

Q. Who is Miss Curts?

A. Miss Curts was the court reporter. Oh, she was there, too.

Q. She was at the meeting?

A. She was at this hearing in Dr. Ralston's office?

Q. And Mr. Kimball was there, likewise?

A. No, Mr. Kimball wasn't there, unless he was in the back room or somewhere. I meant with Mr. Fullerton.

Q. Wait just a second while I locate an exhibit.

The Court: What was the date of this meeting, Dr. Robinson? I am not sure that I have it.

Mr. Sembower: November the 21st, 1950.

The Court: Are you looking for something in particular?

Mr. Sembower: I beg your pardon? [448]

The Court: Is the Clerk looking for an exhibit?

Mr. Sembower: Yes, we have 242 and 244.

The Clerk: I gave you that this morning.

Mr. Sembower: I'm sorry, the lost is found.

I have Plaintiff's Exhibit for identification 242,



(Testimony of Miles H. Robinson.)

which purports to be a copy of the hearing before the board of trustees of the Walla Walla Valley Medical Society to investigate a complaint by Mr. Thomas R. Brooks against Dr. Miles H. Robinson on November 21, 1950, at 8 p.m., and I ask that this be admitted in evidence.

Mr. Kimball: There is another copy of that that I will admit as being a copy that was kept in the office of the society, if that is what you want to introduce it for.

Mr. Sembower: Perhaps I had better ask the witness about that.

Q. I have here also 244, Plaintiff's Exhibit 244, which also purports to be a hearing before the board of trustees of the Walla Walla Medical Society to investigate a complaint by Mr. Thomas R. Brooks against Dr. Miles H. Robinson on November 21, 1950, at 8 p.m. and I have also Plaintiff's Exhibit 243, which purports to be a photostatic copy of a transcript of a hearing before the board of trustees of the Walla Walla Valley Medical Society with the same title precisely as the other exhibits. I will ask you, Dr. Robinson, if you have seen [449] these three transcripts before? A. Yes.

Q. Will you state where you have seen them before and under what circumstances and what they do represent?

A. Well, this one of 243 is a transcript of the hearing of this meeting of November 21, 1950; that is to say, it is a copy of a transcript, and I obtained this copy by subpoenaing from the AMA the copy



(Testimony of Miles H. Robinson.)

that was sent to them by the local society and we had that copy photostated and this is the photostat of it.

The Court: It is a photostat of a carbon copy?

Mr. Sembower: A photostat of a carbon copy.

The Court: All right.

A. Yes, sir.

Q. (By Mr. Sembower): What became of the carbon copy from which it was photostated?

A. Well, that had to be returned to the AMA, but this copy has in the lower right-hand corner the initials of the court reporter when that carbon copy was submitted in response to a subpoena served on the AMA.

Q. Subpoena duces tecum, Dr. Robinson?

A. Yes, it was in this lawsuit.

Q. Now, was that a photostatic copy of either of the other two transcripts which you are holding?

A. Yes, to the best of my knowledge, without reading it in [450] great detail, it is identical with this Exhibit No. 242, and 242 is also a transcript of the hearing of the same meeting and there is the initials of Florence Green, the court reporter here, and the reason I think the two are the same is because there were some pages inserted in 242 of bond paper and with a different typewriter and the direct printing of the typewriter and those different pages show up to be the same as the different pages in the copy we obtained from the AMA.

Q. This copy that you have just referred to, that

(Testimony of Miles H. Robinson.)

is also identical with the photostat which is 242, when did you last see——

The Court: Why, may I ask, are you putting in three copies of the same document?

Mr. Sembower: Because we want to show the differences in them, the significant differences in these copies of the transcript of this hearing, which purport to be the same.

The Court: How are you going to prove that number 243 is a photostat of a carbon copy of 242 unless you bring the one who photostated it here and prove it? This witness is testifying to pure hearsay, of course.

Mr. Sembower: That is correct.

The Court: To the copying of the document.

Mr. Sembower: That is correct.

The Court: We are wasting time unless the defendants [451] waive their objection or unless you can prove the genuineness of these two documents.

Mr. Sembower: Of course——

Mr. Rosling: The difference between the two merely of the bond paper appearing in 244, or is there a difference in context?

Mr. Sembower: There is a difference in context, and this, of course, was received in the deposition taken in this case, the photostatic copy. It is easily identifiable by the type and text with the 242 exhibit, whereas the other one has marked differences in it.

The Court: You mean that 243 is an identical copy of 242?

(Testimony of Miles H. Robinson.)

Mr. Sembower: 243 and 242 appear to be identical copies in every respect.

The Court: And you are putting in 243 because it is the one that you got from the American Medical Association?

Mr. Sembower: That is correct.

The Court: And how about 244, is that the one you claim is different?

Mr. Sembower: 244 is the one we claim which is different.

The Court: Where did that come from?

Mr. Sembower: Where did that come from, Dr. Robinson?

A. That, your Honor, was the copy handed to me right about [452] a month after the hearing, and——

The Court: Who handed it to you?

A. It was sent to me under cover of a letter from Mr. Fullerton of the society.

Q. (By Mr. Sembower): Now, Dr. Robinson, comparing the two carbon copies which you have, what is one significant difference in the text?

Mr. Rosling: Mr. Sembower, will you ask him to identify the copies by the exhibit numbers, please?

Mr. Sembower: Yes.

A. Well, the chief difference between 244 and 242 is that pages have been inserted in 242 which are bond pages with the original typing on it and those pages are the following numbers: Page 12, page 31, page 48 and page 49.

(Testimony of Miles H. Robinson.)

Taking the wording on the unusual bond pages inserted in 242, if I remember rightly, there is a difference in the wording.

Mr. Kimball: If it will shorten it any, we will let them all go in, your Honor, for whatever purpose they may serve.

The Court: Well, if you have no objection, then, they will all be admitted. Then you can call attention of the Court later on when you get better organized as to what the differences are and what significance you attach to it. [453]

(Whereupon, the said documents were admitted in evidence as Plaintiff's Exhibits Nos. 242, 243 and 244.) .

Mr. Sembower: Matter of fact, your Honor, we have a very definite purpose in these transcripts. The transcripts are full of mistakes and errors and Dr. Robinson by his recollection of what took place is prepared to testify to that effect. The most serious departure from the text is in one crucial sentence, and I will ask——

The Court: You mean departure of one of them from the other, or——

Mr. Sembower: One of them from the other. The two are different in their statements.

Q. Dr. Robinson, would you state that particular difference at this time?

The Clerk: Have they been admitted?

The Court: Yes, 242, 243 and 244 have been admitted.



(Testimony of Miles H. Robinson.)

A. The thing that I believe Mr. Sembower wanted to bring out, the particular thing, does not show up as a difference between these transcripts. It is a difference between all of these transcripts and Miss Curts' original shorthand notes, which we had analyzed.

Q. (By Mr. Sembower): Well, now, Dr. Robinson——

The Court: Have the shorthand notes been identified here? [454]

Mr. Sembower: No, we are going to bring them in. I wanted to get Dr. Robinson's testimony. We are going to present also Miss Curts, who was the shorthand operator. Since they have been accepted, I will simply enter them at this time, as the Court suggested. We will analyze them further for next week.

Q. I will ask you, Dr. Robinson, however, whether the transcript of the proceedings is a clear and accurate transcription of what occurred at the meeting? A. No, they are not and——

Q. Well, we will establish that, then, in detail from a comparison with the notes.

Will you tell us from your own recollection what occurred at this meeting, this meeting of November the 21st, 1950, at which the Brooks' complaint was heard by the board of trustees?

The Court: Do you claim that there are inaccuracies and minor discrepancies here, or a whole garbled and untrue account of the proceedings?



(Testimony of Miles H. Robinson.)

Mr. Sembower: I would say a whole, garbled and untrue account, your Honor.

The Court: Do you attribute that to inexpertness of the reporter or to deliberate design?

Mr. Sembower: Your Honor, we are reluctant to attribute it to deliberate design on the part of the reporter. [455]

The Court: Are you going to call the reporter as a witness?

Mr. Sembower: We are going to call the reporter as a witness.

The Court: Yes, all right, go ahead.

A. We sat down in this hearing and Dr. Page invited me to give my side of the story and I attempted to do so, but I was constantly interrupted and harassed by Mr. Brooks, who insisted on telling his story over and over again. The hearing lasted about three and three-quarters hours.

Q. Who presided at the hearing?

A. Dr. Page.

Q. What was the manner in which the hearing was conducted? Was there cross-examination of the witness?

A. No, there were practically no questions by the trustees. It consisted mostly of my efforts to tell my story and Tom Brooks repeating his story.

Q. Who was the first person who spoke with reference to the incident in the meeting?

A. With reference to what?

Q. With reference to the incidents surrounding this complaint?

(Testimony of Miles H. Robinson.)

A. Well, I really couldn't say which one of us talked first. In general, I was invited to give my side of the story and very early in the hearing I asked to quote from my [456] book on syphilology to explain the circumstances of Brooks' condition and why I had to handle his case the way I did, and the very first thing that Dr. Page said was he refused to let me quote from any medical books on the subject and said we could spend all night on syphilis and that that had nothing to do with the complaint of Mr. Brooks.

Q. Was there any specification of the charges brought against you at this meeting?

A. No, it was just a general talk. There was no charges brought against—mentioned in the meeting.

Q. What, in substance, did you tell the meeting?

A. Well, I simply detailed my experience with the family, as I have already given it here.

Q. What, in substance, did Mr. Brooks state at the meeting?

A. Well, he told his story the same as in his complaint. He denied that he ever advised his daughter in Spokane not to pay a doctor bill, and then he put on a kind of a charade, is the only way I could describe it. He said to Dr. Page, he said, "Now, I want to prove that Noel Edwards, my son-in-law, told me that Dr. Robinson told him that I, Tom Brooks, had syphilis," and he said, "I want Noel now to go outside the room and while he is out I will tell you gentlemen what Noel Edwards,

(Testimony of Miles H. Robinson.)

my son-in-law, told me," that is, told Tom Brooks, "and then we [457] will call my son-in-law back in the room and he can confirm that he told me just what I am telling you doctors here."

Well, I immediately objected to that because, in the first place, we had been there about three hours and it seemed a silly kind of a game, it couldn't possibly prove anything, but Dr. Page was very impressed with this scheme and so Mr. Brooks said, "Now, Noel, you step aside," and while he was out Mr. Brooks described how his son-in-law had told him that I had revealed Tom Brooks' syphilis on a conversation, that last conversation that I had with Edwards, and then Dr. Page—or Tom Brooks—said, "Well, we'd better call my son-in-law in, he is out there in the snow." It was snowing outside. And so they called him back in and Noel Edwards more or less faithfully reproduced, I guess, what his father-in-law had just been saying, and Dr. Page felt that quite a great point had been made.

Well, that was about the last thing that took place, except toward the end Dr. Page said, well, there seemed to be two sides to the story and the Brooks family seemed happy and they had got all their say in and I hadn't anything more to say, so that was the end of the hearing.

Q. Was there any vote taken while you were present? [458]

A. No, no, there was no vote. Dr. Keyes said—somebody asked—well, Tom Brooks started to say something about how he was going to sue, and Dr.

(Testimony of Miles H. Robinson.)

Keyes spoke up very sharply and said, "Now, look here, we don't want any talk about lawsuits. The object of this hearing is to avoid a lawsuit." And that is one of the things that was never in the transcript. There is part of it in there, but the whole part of it is not there.

Those, I think, are the main highlights of it.

Q. Did you make any admissions in this hearing, Dr. Robinson, that you had taken precipitate or ill-considered action in this case?

A. I certainly did not.

Q. Did the transcript reflect that you did make such a statement?

A. Oh, yes, yes. The transcript states, and it has to do with that last conversation with Noel Edwards——

Q. Can you find it quickly in the transcript if I hand it to you?      A. Yes, yes; I can.

Q. I hand you Plaintiff's Exhibit 242. It is on one of the pages that was on a different kind of paper sent to the AMA.

Mr. McNichols: 49, John.

Mr. Sembower: Turn to page 49. [458-A]

A. 49. Yes. What had happened was this: I talked to Noel Edwards on Monday, October the 9th, the last conversation I had with anybody in the family, and, as I mentioned here earlier, I called him up and said, "Well, I guess I have done all I can and I am going to have to resign from the case. I have already resigned, I am going to resign, and I have told Tom Brooks that I am through



(Testimony of Miles H. Robinson.)

with his case.” And before I could say anything else, Edwards said, “Well, you don’t have to say anything to me about it, I know he has got syphilis.” And then nothing more was said except I said, “Well, all right.”

The Court: This is repetition, is it not?

Mr. Sembower: Yes, this is repetition.

The Court: You testified to that before, this morning.

Q. (By Mr. Sembower): How does that compare with what you have in the transcript, Dr. Robinson?

A. Yes. So here is what it says in the transcript:

“Dr. Robinson: I didn’t tell him, but Mr. Edwards knew what I was talking about. I jumped the gun. That was all right.”

Now, that is what the transcript says, and what I said at that meeting was, “He jumped the gun,” not “I jumped the gun.” In other words—— [459]

The Court: Will you read that again, please? I didn’t get that.

A. The transcript reads, Dr. Robinson speaking:

“I didn’t tell him, but Mr. Edwards knew what I was talking about. I jumped the gun. That was all right. I had a responsibility,” et cetera.

That is on page 49.

Q. (By Mr. Sembower): Well, now, Dr. Rob-



(Testimony of Miles H. Robinson.)

inson, is what you have read an accurate transcription of what you said?

A. Well, it is a complete reversal. What I said was, "He jumped the gun." Edwards told me what the disease was and Miss Curts' notes show that her original notes show the words, "He jumped the gun," which was the way I said it.

Q. Now, Dr. Robinson, do you find in an examination of Plaintiff's Exhibit 243, which you stated a moment ago was a photostatic copy of the transcript which you received upon subpoena from the American Medical Association's records, the same garbled misstatement of your testimony in that copy?

A. Yes. This is the copy sent to the AMA and it contains this statement, "I jumped the gun."

Q. Dr. Robinson, what happened next following—

The Court: What was the page of that? I didn't get the page. [460]

Mr. Sembower: Page 49, was it?

Mr. Rosling: 49.

The Court: Exhibit 242, page what?

Mr. Rosling: 49.

Mr. Kimball: 49.

The Court: 49, all right. That is all, Mr. Sembower, I have the number. Thank you.

Q. (By Mr. Sembower): Dr. Robinson, what happened next following the meeting, the special meeting of the trustees held on November the 21st, 1950?

(Testimony of Miles H. Robinson.)

A. Well, I don't recall exactly. I do know we had the annual meeting on December the 14th and in the meantime I may have written the State Medical Association realizing that I was helpless here.

\* \* \*

Q. (By Mr. Sembower): Dr. Robinson, have you seen this exhibit 48 before? A. Yes.

Q. Will you tell us what it is?

A. This is a letter to the trustees of the Washington State Medical Association which I wrote the day after this hearing of November the 21st that we were just discussing. [462]

\* \* \*

Q. Dr. Robinson, to whom did you send this statement or letter?

A. Was that the one to the board of trustees?

Q. Yes. Did you send this to any others than the members of the state board of trustees?

Mr. Rosling: Is it not addressed to the officers of the state medical association?

Mr. Sembower: It is addressed to the trustees of the Washington State Medical Association.

A. Well, that would have gone only to the trustees of the state association.

Q. Dr. Robinson, did you receive any response to this communication?

A. No response whatever.

Mr. Kimball: Are the enclosures attached to that that are referred to in the letter?

Mr. Sembower: They are not attached.

(Testimony of Miles H. Robinson.)

Q. Dr. Robinson, did you send along the enclosures?

A. Well, if it says so in the letter, I am sure I did. [466]

Q. And what were the enclosures?

A. I would probably have to look through the context of the letter to know just offhand. I assume it would include the \$1.50 letter from the grievance committee and possibly a copy of the charges I filed with the local society here against this secret committee, and, I don't know, it may have had the Brooks' charge in it. I tried to give them as much information as I could, that I had handy at the time.

Q. To the best of your knowledge, however, you did enclose in this communication whatever was referred to in the letter?

A. Oh, yes.

Q. Why did you write the letter, Dr. Robinson, to the trustees?

A. Well, I had written the AMA earlier and they said that they were surprised that we had a secret——

Q. Who had you written to at the American Medical Association?

A. I had written the president of the AMA.

Q. And who was that?

A. His name was Henderson.

Q. And did the president of the American Medical Association respond to your letter?

A. Yes, he did. [467]

Mr. Sembower: We are getting a little bogged

(Testimony of Miles H. Robinson.)

down in our exhibits. I think we will have them in just a moment.

I think while we are seeking those exhibits, I will proceed with my questioning.

The Court: Yes, all right.

Q. (By Mr. Sembower): I have in my hand Plaintiff's Exhibit No. 296 for identification, purporting to be the constitution and bylaws of the Washington State Medical Association adopted in 1940, and I ask you, Doctor Robinson, if you have ever seen this before? A. Yes.

Q. Will you tell us where you last saw it and under what circumstances?

A. Well, this was either sent to me or—yes. it was sent to me. I thought for a minute I may have gone over to Seattle to get it. This was sent to me by the Washington State Medical Association and it consists of the constitution and bylaws of the state medical association. I believe I got this some time late in 1951 when I was trying to find out how to appeal my expulsion to higher authorities, but I am not exactly sure when I did get it.

Q. Did you request this statement of the constitution and bylaws then applying?

A. Yes. [468]

The Court: 296, the 1940 edition, isn't it?

A. Yes.

Mr. Kimball: Did he say he requested it?

Mr. Sembower: He said he requested it.

Mr. Kimball: Orally or in writing?

Q. (By Mr. Sembower): Do you remember whether it was oral or written, your request?

(Testimony of Miles H. Robinson.)

A. It is hard for me to remember because I had quite a difficult time getting a copy of this.

Mr. Rosling: If your Honor please, I am going to object to this statement and I ask that it be stricken as not responsive to the question asked, purely volunteered.

The Court: No, it isn't responsive. It will be stricken from the record.

Q. (By Mr. Sembower): Well, Dr. Robinson, do you recall asking for a copy of the then applying constitution and bylaws of the American Medical Association? A. Yes.

Q. And about what time did you make that request? I mean, the Washington State Medical Association bylaws and constitution, do you recall making that request? A. Oh, very well.

Q. And about when did you do that?

A. I recall making—I should correct my answer—I recall making several requests and our records which have been [469] introduced will show written requests and written responses to those requests and, in addition, there were oral telephone conversations that I had.

Q. And what did you receive in response to those requests?

A. Well, I received this 1940 edition and at some later time I also received by registered mail a later edition, I think the 1951 edition.

Q. But the source of this edition was in response to your request to the Washington State Medical Association?

A. Well, so far as I can remember. Oh, I am



(Testimony of Miles H. Robinson.)

quite certain, I am quite certain it was, because there was no other place that I could get it.

Now, I did ask Mr. Fullerton of the local society for a copy, but my recollection is that he either didn't have one or he couldn't spare one. I don't remember which.

Mr. Sembower: Your Honor, it is our contention that this exhibit is the only copy which plaintiff was able to receive from the Washington State Medical Association prior to the receipt of the later edition. We are offering it as an exhibit in that connection and I ask that it be received in evidence.

Mr. Kimball: We have no objection, your honor.

The Court: Let's see, that is——

Mr. Kimball: 296. [470]

The Clerk: 296.

The Court: 296. All right, it is admitted. [471]

\* \* \*

The Court: If you have finished with the reading, Mr. Sembower, I think this would be a good time to suspend.

Mr. Sembower: It is a logical breaking point.

The Court: And I might say this, that Mr. Granger will be here all day tomorrow so that if you wish to have access to these exhibits which have already been admitted or held by him here, he will be available for that purpose. And my secretary is having considerable difficulty getting out this pretrial order. It is quite a task.

Mr. Sembower: A terrific task.

(Testimony of Miles H. Robinson.)

The Court: In view of the large number of witnesses and exhibits listed, and she would like to check the list of exhibits and get them as accurate and up-to-date as possible, and if you are not going to use these, I would appreciate it if you would turn in the copies of the exhibits that have been submitted to you and then she will check them over and try to [479] have the completed order with the listing of exhibits and witnesses Monday morning. She is going to stay here and work on them tomorrow, and it is a little like trying to repair a machine while it is in gear, it is hard to get this rounded up while the trial is going on, but we have to do the best we can, so if you will just turn in your copies to Mr. Granger here. [480]

\* \* \*

### MILES H. ROBINSON

having been previously duly sworn, resumed the stand, and testified further as follows:

By Mr. Sembower:

Q. You are the same Dr. Miles H. Robinson who was testifying at the time the court recessed last Friday? A. Yes.

Q. Dr. Robinson, was anyone placed under oath or sworn at the November 21st meeting, November 21, 1950, of the trustees at which the Brooks' complaint was heard? A. No. [490]

Q. Dr. Robinson, after the meetings of November 20, 1950, which was the special meeting called at your request pursuant to the petition which you

(Testimony of Miles H. Robinson.)

secured for consideration of the continuance of the grievance committee, and the November 21st meeting, 1950, of the trustees, at which the Brooks' complaint was heard, what was the first meeting that was held subsequent to those meetings?

A. I think there was a meeting later in the month, but I would like to see the minute book to be sure.

Q. I call your attention to Plaintiff's Exhibit No. 384, which is the minute book of the Walla Walla Valley Medical Society and Bureau, and ask you if you will examine it to see when the next meeting was held, if you recall?

The Clerk: I think you got the wrong number on that exhibit.

Mr. Sembower: Did I?

The Clerk: I think it is 447. Is that the new minute book?

Mr. Sembower: I believe it is.

A. It is 447.

Mr. Sembower: 447, I'm sorry. Thank you, Mr. Clerk.

A. There is a regular meeting of the trustees of the society [491] on November 28, 1950.

Q. Did you attend that meeting?

A. Well, that was the trustees meeting so I did not attend that meeting.

Q. What was the next meeting you did attend?

A. The next meeting I attended was the annual meeting of December 14, 1950.

Q. You say that this was the annual meeting, what was the annual meeting of, Dr. Robinson?

(Testimony of Miles H. Robinson.)

A. Of the Walla Walla Society.

Mr. Sembower: Reading from the minutes for the annual meeting of the Walla Walla Valley Medical Society held at the Grand Hotel on December 14, 1950:

"The meeting was preceded by the customary social hour at 6:30. The speaker for the evening was Dr. Walter B. Seeley, Department of Pediatrics, University of Washington School of Medicine, who spoke on management of some of the common infections of infants and children. Following the scientific discussion, President Page declared nomination open for officers for the society for the coming year.

"Dr. Moore raised a point of order that [492] there was old business before the house that should precede the election of officers. The Chair ruled there was no old business before the house and the meeting would proceed with the nominations of officers."

Q. Dr. Robinson, did you attend this meeting?

A. Yes.

Q. Do you know to what Dr. Moore referred when he spoke of old business?

A. He referred to motions which were made and seconded but tabled at the special meeting of November 20th which I called on the subject of abolishing the secret grievance committee.

The Court: When was this meeting Mr. Sembower, the one that you were reading from?

Mr. Sembower: The meeting referred to at this



(Testimony of Miles H. Robinson.)

time is the annual meeting of December the 14th, 1950.

The Court: Thank you.

Mr. Sembower: I believe that the meeting to which the witness referred was November 20th.

The Court: Yes, I know.

Mr. Sembower: There follows in the minutes the nomination of officers:

“Dr. Holmes presented the report of the nominating committee: [493]

“For President: Morton W. Tompkins.

“For Vice-President: I. C. Bohlman.

“For Secretary-Treasurer: Leroy O. Carlson.

“For Trustee: W. A. Pratt.

“For Delegate: Clifford D. Hogenson.

“For Alternate: George A. Faulkner.

“The Chair declared nominations open from the floor and Dr. Pratt nominated Dr. Page for President.

“Dr. Hogenson nominated Dr. Beaver for Vice-President.

“Dr. Carlson moved the nominations for President and Vice-President be closed. The motion was duly seconded and carried. There being no further nominations for the offices of Secretary-Treasurer, Trustee, Delegate or Alternate, Dr. King moved that all nominations be closed. The motion was duly seconded and carried.

“Drs. Ralston and Keyes acted as tellers and the following ballots were cast:



(Testimony of Miles H. Robinson.)

“For President:

“Tompkins ..... 25

“Page ..... 6

“For Vice-President:

“Beaver ..... 23

“Bohlman ..... 8

“For Secretary-Treasurer:

“Carlson ..... 29

“For Trustee:

“Pratt ..... 28

“For Delegate:

“Hogenson ..... 29

“For Alternate:

“Faulkner ..... 29

“Dr. Kahler moved that the motion made by Dr. Moore at the Special Meeting of the Society held November 20, 1950, amending an original motion of Dr. Robinson, be taken from the table.

“Dr. Stevens raised a point of order that an amendment cannot be taken from the table without the entire motion and all amendments be also taken from the table. The Chair sustained the point of order.

“The chair asked Dr. Kahler if he desired to restate his motion and Dr. Kahler moved the original motion of Dr. Robinson, the amendment of Dr. Moore and the amendment to the amendment of Dr. Holmes be taken from the table. The motion was seconded by Dr. Hogenson and carried.

“Drs. Stevens, Robinson, Pratt, Keyes, Lange and Smith spoke on the motion.

(Testimony of Miles H. Robinson.)

“Dr. Smith moved, seconded by Dr. Brooks, that the question before the house be dropped without prejudice. The Chair ruled [495] the motion out of order.

“The Chair explained the various motions before the house, read and called for a vote on the amendment to the amendment. On a rising vote the tally was yes 7 and no 18.

“The Chair then read and called for a vote on the amendment to the original motion.

“On voice vote the Chair declared the amendment defeated.

“The Chair then read the original motion and called for a vote thereon. On voice vote the Chair declared the motion defeated.

“Dr. Stevens stated the membership had all received mimeographed copies of the authority, duties and rules of the grievance committee and moved they be adopted as the authority, duties and rules of the committee.

“Dr. Kahler moved, seconded by Dr. Ralston, that the motion be laid on the table as a special order of business for the next meeting of the society, explaining that this would give each doctor time to study the proposal and prepare any amendments or corrections he thought desirable. On [496] rising vote the tally was Yes 19, No 11.

“Upon direction of the President, the Executive Secretary read the minutes of the meeting of the Board of Trustees held December 13, 1950.

“In compliance with the bylaws, Dr. Page in-

(Testimony of Miles H. Robinson.)

stalled Dr. Tompkins as the President of the Society for the year 1951.

“Meeting adjourned at 11:00 p.m.”

Q. Dr. Robinson, will you tell us to the best of your recollection what occurred at this meeting?

A. After the scientific session, the main thing that I remember happening first was this voting on all these motions and amendments and amendments to amendments. My recollection now is about what my impression at the time was, that I could hardly tell what we were voting for, it was extremely confused, and I thought I knew as much as anyone what we were trying to do to get rid of this grievance committee, but the motions were very involved and they were defeated.

I also recall the remarks that were made by the various people that spoke.

Q. Do you recall any remarks made by Dr. Lyman at the meeting?      A. Yes, I do. [497]

Q. What did he say, if you recall?

A. Well, he spoke very late in the evening after Dr. Stevens and I and others had spoken, and he said, referring to this whole controversy over the Edwards matter and, as I understood it, on the Brooks matter, as well, he said, “This whole affair is trivial and we have got much more important things to do and we ought to drop it and continue.” And I remember at the time that he was very upset.

Q. Did Dr. Smith speak at the meeting?

A. Yes, Dr. Smith made his motion to drop the whole controversy without prejudice, and he referred to my complaint against the grievance com-

(Testimony of Miles H. Robinson.)

mittee and the Edwards' and Brooks' complaints against me.

Q. Did he make any statements in support of his motion that you recall?

A. Well, it was either at this meeting or an earlier meeting or some other meeting that he said that he had practiced in Walla Walla some 35 years and that about 20 years ago there used to be a great deal of ganging up of one group of doctors on some other doctor, but he said he thought that that was over with and he was distressed and very concerned to see that old business coming back.

Q. Did you speak before the meeting? [498]

A. Yes, I did.

Q. Do you remember the substance of your remarks at the meeting?

A. Well, what happened first was that Dr. Stevens spoke. He was the first speaker.

Q. Do you recall what Dr. Stevens said, in substance?

A. Yes, I do. I don't think I would ever forget what he said. He got up and, without any warning to me and very much to my surprise, he attacked me quite savagely.

Q. What did he say about you, Dr. Robinson?

A. Well, he pulled a piece of paper out of his pocket and he walked down in front of the meeting and he read from this paper. He said—first, he ridiculed the letters that I had written to the society, pointing out the violation of the constitution and bylaws inherent in the activities of this secret grievance committee and its writing this letter to



(Testimony of Miles H. Robinson.)

the Edwards. Then the very next remark he made was, he said, "With regard to these wild letters that Dr. Robinson writes and his general behavior, the Russians are babes in the woods compared to him."

Then the next thing he said—I don't recall the exact order, but he said, "Here is Dr. Robinson who has attacked the medical bureau, which is our bulwark against socialized medicine, and he is not co-operating [499] with us in fighting socialized medicine."

Then he went on to say that I had practically wrecked the principle of the grievance committee, which the AMA was trying to establish and the state and the local society also trying to establish. He then went on to say that I had caused a serious division in the Walla Walla Society at a time of national crisis.

Q. Do you recall anything else that he said?

A. Well, he said the AMA would like to hear about this, and he said, "Dr. Robinson has the nerve and the guts to denounce an approved policy of the Walla Walla Society." Well, I was starting to see what I thought he was referring to, but it was the grievance committee and what he had been just mentioning.

Mr. Sembower: I have in my hand Plaintiff's Exhibit marked for identification 384, bearing no title or signature, typed in green ink, purporting to be a statement or outline of remarks for a speech delivered by the defendant Dr. Stevens, and ask that it be admitted.



(Testimony of Miles H. Robinson.)

The Court: What number is that?

The Clerk: 384.

Mr. Kimball: No objection.

The Court: Any objection to that?

Mr. Kimball: No objection.

The Court: 384 will be admitted, then, Plaintiff's 384. [500]

(Whereupon, the said statement was admitted in evidence as Plaintiff's Exhibit No. 384.)

Q. (By Mr. Sembower): Dr. Robinson, with respect to your testimony that Dr. Stevens referred to a division in the society, had you created a division in the society?

A. Well, I had not created any division, I had merely pointed out where this grievance committee was illegal and in violation of our rules and established a very serious precedent. Then we called a special meeting of November the 20th and had a vote on it.

\* \* \*

Q. (By Mr. Sembower): Did a division actually exist in the society at this time?

A. Why, I think there was a division on the matter of the grievance committee, very [501] clearly.

Q. What type of division existed in the society on the question of the grievance committee?

A. Well, many of the members thought it was a terrible thing and some of the members and all of the defendants in this lawsuit thought it was a

(Testimony of Miles H. Robinson.)

very good thing to have this secret grievance committee.

Q. Who were some of the members who did not agree with the policy of the grievance committee, if you recall?

A. Well, there were 14 that voted against it and it was a secret vote, so I don't really know just which ones they were. [502]

\* \* \*

Q. (By Mr. Sembower): I hand you, Dr. Robinson, Plaintiff's Exhibit 56 and ask if you have seen that letter before? A. Yes.

Q. When did you receive that letter, to the best of your recollection?

A. Well, I believe that was received a day or so after it was written in the ordinary course of mail.

Mr. Sembower: Exhibit No. 56 reads as follows:

"Dear Dr. Robinson:

"At a meeting of the Board of Trustees of the Walla Walla Valley Medical Society held December 13, 1950, the following resolution was adopted."

It then quotes the resolution which was adopted at the December 13th meeting of the trustees, December 13, 1950.

Q. Referring to the language there, Dr. Robinson, to justify the board of trustees referring the complaint so made to the grievance committee, I will ask you what this letter meant to you when you received it?

(Testimony of Miles H. Robinson.)

Mr. Kimball: If your Honor please, wouldn't the letter be the best evidence of its intent or meaning, unless [506] there is some significance that is attached to the doctor's interpretation of it?

Mr. Sembower: Your Honor, the reason why I ask the question is because the witness will testify that when he read this, it did not carry the import to him that the matter was to be referred or had been referred, or even would be, but that the expression of the trustees was that it justified referral, and that conditioned considerable of his actions in the ensuing weeks.

The Court: I will permit him to answer that. Objection overruled.

A. The letter was ambiguous to me. I took it as an expression of opinion on the part of the trustees that the Brooks matter was serious enough so that it could be referred to the state grievance committee, but I did not gather from that that the matter had actually been referred or actually would be referred.

Q. (By Mr. Sembower): Referring to Plaintiff's Exhibit No. 55, which is a short letter from Sam R. Page to Dr. Robinson, stating:

"At a meeting of the Board of Trustees of the Walla Walla Valley Medical Society held December 13, 1950, the charges presented in your letter of November 7, 1950, addressed to the above Board were carefully considered [507] in detail and it was the unanimous opinion of the Board that the charges were without merit."

(Testimony of Miles H. Robinson.)

Do you know to what this letter referred?

A. Yes, that referred to my complaint to the society against the secret grievance committee.

Q. Did you receive notice from the trustees or Dr. Page or anyone else that the Brooks matter had been referred to the state grievance committee?

A. I never received any notice of any kind from the local society that that had been done and, on the contrary, along in January I talked to Dr. Tompkins on the street and I said, "What is going to be done about this, anything or nothing or what is the situation?"

Q. Was there anyone else present when you were talking with Dr. Tompkins?           A. No.

Q. Tell us what you said to him and what he said to you in that conversation.

A. I asked him about this possibility of a referral, and he said, "No, it has not been referred yet." And that is all that was said.

Q. Is your recollection clear concerning that conversation?

A. Very clear, because I was very concerned about the matter. It seemed to me just one more step, if it were [508] done, of improper management of this whole affair.

\* \* \*

Q. (By Mr. Sembower): Referring to Plaintiff's Exhibit No. 23, which has been admitted, a letter written five days after the Brooks' complaint was filed on October the 26th, 1950, Dr. Robinson,



(Testimony of Miles H. Robinson.)

did you know of the inquiry or the letter sent on that date, which is Exhibit 23, from the defendant Fullerton to the state society?

A. Absolutely no knowledge. [509]

\* \* \*

Q. (By Mr. Sembower): Dr. Robinson, I find in the minutes of the meeting of the board of trustees of the Walla Walla Valley Medical Society held at the Marcus Whitman Hotel, December 21, 1950, the entry—first I will state the members present consisted of Drs. Tompkins, Beaver, Carlson, Pratt, and Page, and S. E. Fullerton, Executive Secretary.

“Dr. Beaver moved, seconded by Mr. Carlson, that the Board recommend to the membership [514] a special assessment against all active members be levied to pay the costs of the hearings and investigation of the complaint of Thomas R. Brooks and Dr. Miles H. Robinson. Motion carried.”

Dr. Robinson, when did you first learn of the levying of such a special assessment, if you recall?

A. Was that the \$6.45 assessment?

Q. I will have to ask you that because it doesn't state here the sum.

A. Well, there was such an assessment and it was the first one levied. The records will show just when that came out, but I believe it was in January, a notice was sent to all members that they were assessing each of us \$6.45 for extraordinary legal expenses during 1950 and——



(Testimony of Miles H. Robinson.)

Q. Did you in your conversation, in your contacts with members of the society, detect resentment over this levying of a special assessment for this purpose?

A. Yes, I did, because we all knew that this assessment was to pay the costs of Mr. Kimball investigating the Brooks' and Edwards' complaints and it was so confirmed to be for that purpose later in the year in the annual statement. [515]

\* \* \*

Mr. Sembower: I have Plaintiff's Exhibit No. 62, which has been admitted, and I read from it. Ralph W. Neill to Mr. C. E. Fullerton, Executive Secretary:

"Dear Charlie:

"Our Executive Committee considered your letter of December 16 referring the case of Thomas R. Brooks vs. Dr. Miles H. Robinson to the Grievance Committee of W.S.M.A. when it met December 20.

"The Grievance Committee is in the process of being organized, but is not yet functioning. You will be informed as soon as the committee is ready to consider this matter so that all pertinent information can be forwarded."

Q. Dr. Robinson, did you know that the state grievance committee had responded to the local society in this fashion? A. No.

Mr. Sembower: I have Plaintiff's Exhibit 64 for identification, purporting to be a letter from C.

(Testimony of Miles H. Robinson.)

Balcom Moore, M.D., to Miles H. Robinson, dated January 8, 1951, and ask that it be admitted. [523]

\* \* \*

Q. Dr. Robinson, do you recall if Dr. Moore held any [524] official position at that time in the bureau or the society?

A. Well, he was either president of the bureau at that time or had been a few months before.

The Court: Is that Dr. Moore?

Mr. Sembower: Yes, Dr. C. Balcom.

The Court: Yes, all right.

Q. (By Mr. Sembower): Dr. Robinson, did you consider resigning from the society? A. Never.

Q. What effect would resignation from the society have upon your medical practice at this time?

A. If I resigned, I would instantly lose all my hospital privileges.

Q. Did you give any consideration at this time to resigning from the society? A. No.

Mr. Sembower: I have Plaintiff's Exhibit No. 65 for identification, purporting to be a mimeographed duplicate original of notice of regular monthly meeting of the society, local society, and the Medical Service Corporation, signed by C. Balcom Moore, President of the Service Corporation, and Morton W. Tompkins, President of the Society, and ask that it be admitted.

Mr. Kimball: No objection. [525]

The Court: It will be admitted, then, Plaintiff's Exhibit 65.

(Testimony of Miles H. Robinson.)

(Whereupon, the said notice was admitted in evidence as Plaintiff's Exhibit No. 65.)

Mr. Sembower: Reading from the exhibit, it states:

"The regular monthly business meeting of the Walla Walla Valley Medical Society will be held at St. Mary's Hospital Classroom on Thursday, January 25, 1951, at 8:00 p.m.

"Business to come before the meeting:

"1. At a special meeting the Board of Trustees held January 11, 1951, the following resolution was unanimously adopted."

And there appears here the resolution calling for the assessment which was adopted at the meeting the minutes of which I read a moment ago, except that it supplies the sum of \$6.45.

Q. Dr. Robinson, have you seen this before?

A. Yes.

Q. Does this relate to the levying of the assessment about which you testified a few minutes ago? A. Yes, it does.

The Court: May I see that, please? [526]

(Exhibit handed to Court.)

Q. (By Mr. Sembower): Did you attend a meeting held on or about January 25, 1951, of the local society? A. I believe I did.

Q. Do you recall anything special happening at that meeting?

(Testimony of Miles H. Robinson.)

A. I would like to see the minutes, if I could.

Q. I show you Plaintiff's Exhibit 447 opened to the page containing the minutes of meeting of the Board of Trustees, a meeting of the Walla Walla Valley Medical Society, held at St. Mary's Hospital, January 25, 1951, and ask if you recall being present at that meeting?      A. Yes, I do.

Q. Do you recall anything unusual occurring at that meeting, Dr. Robinson?      A. Yes, I do.

Q. What occurred there?

A. Well, I had been given the information some little time before that a doctor in our society here in Walla Walla had had his narcotics license revoked by the Federal Bureau of Narcotics, and I felt that since there had been so much interest stirred up in question of ethics, that I would get up in the meeting and tell the trustees this fact, and I did so.

Q. Did anything occur after that with respect to that [527] matter?

The Court: What meeting was that, now?

Mr. Sembower: This is the meeting of the society.

The Court: I mean the date, the date of the meeting?

Mr. Sembower: January 25, 1951.

The Court: Thank you.

A. Well, there was a dead silence and there was absolutely no response on the part of the officers or trustees or anybody to what I had said, and then Falkner very hurriedly introduced an entirely dif-

(Testimony of Miles H. Robinson.)

ferent subject. He said, "I would like to mention that the drug stores in town are handing out too many prescriptions to patients without us doctors having anything to do with it." So we went on to that, but there was no discussion or no response of any kind to the information I gave them about this doctor on the narcotic affair.

Q. (By Mr. Sembower): To your knowledge, was any action ever taken with respect to this matter by the society or the trustees?

A. No action was ever taken.

Mr. Sembower: I have here Plaintiff's Exhibit 66 for identification, purporting to be tear sheets from the issue of Northwest Medicine for February, 1951, containing the rules and regulations of the Grievance Committee of the Washington State Medical Association, and ask that it be [528] admitted.

Mr. Tuttle: What is the number?

The Court: What is the number?

Mr. Sembower: The number is 66.

The Clerk: 66.

The Court: It will be admitted, then. There is no objection.

(Whereupon, the said sheets were admitted in evidence as Plaintiff's Exhibit No. 66.)

Mr. Sembower: This is Volume 50, No. 2, and the date is February 16, 1951.

Q. I hand Plaintiff's Exhibit No. 66 to you, Dr. Robinson, and ask when you first saw those pages, if ever?



(Testimony of Miles H. Robinson.)

A. I first saw these after the provisions contained here were cited to me by the Chairman of the State Grievance Committee some time in late March or April.

Mr. McNichols: Of what year?

A. Of 1951.

Mr. Sembower: Without reading the exhibit fully, I merely call attention to the provision in the first paragraph to the effect that the following rules and regulations which will become effective ten days after publication in Northwest Medicine.

Q. Did you know, Dr. Robinson, that any such rules were to [529] be published in Northwest Medicine? A. No.

Mr. Sembower: I have Plaintiff's Exhibit for identification 398, purporting to be a photostatic copy of a press release. I think Mr. Rosling called these "red tops" the other day. It bears the legend "Bulletin" across the top and is addressed to Presidents, Executive Secretaries and Secretaries, County Medical Societies, from the Central Office of the Washington State Medical Association, with the subject "Grievance Committee," and ask that it be admitted.

Mr. Rosling: May I ask the number again?

The Clerk: 398.

The Court: No. 398. Any objection, gentlemen? Objections are reserved.

Mr. Kimball: No objection.

The Court: It will be admitted, then, Plaintiff's 398. [530]

(Testimony of Miles H. Robinson.)

Q. I ask, Dr. Robinson, when you first saw this announcement, if ever, prior to today?

A. Well, it was early this year, about five years later after it came out, when we subpoenaed it.

Q. Referring to the meetings of the local society which you attended, Dr. Robinson, about which you have testified, was any announcement made of the formation of this program for grievance committees under the aegis of the Washington State Medical Association?

Mr. Rosling: Under the what?

The Court: Sponsorship.

Mr. Sembower: Sponsorship, thank you.

The Court: It is easier for me.

Mr. Sembower: It is easier for me, too, but I couldn't think of the word.

The Court: All right. [532]

A. I had never heard anything about the state grievance committee in any of our meetings. It seems to me the first knowledge that I had of it was in Dr. Page's letter to me some time there in December, either 13th or 14th, in which he said that the Brooks' complaint could be referred to a state grievance committee.

Q. Did you state year, Dr. Robinson?

A. That was 1950.

Q. 1950, thank you.

A. But the state grievance committee, I am certain, was never discussed in the general meetings of our society.

Q. Dr. Robinson, we are now in March, '51.

(Testimony of Miles H. Robinson.)

What happened next with respect to your relations with the society, if you recall?

A. (No response.) [533]

\* \* \*

Q. (By Mr. Sembower): I hand you Plaintiff's Exhibit No. 67 and ask you if you remember seeing this letter prior to today? A. Yes.

\* \* \*

Q. Did you receive this letter, Dr. Robinson?

A. Yes, I did. [534]

\* \* \*

The Court: 68 will be admitted. There is no objection.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 68.)

Mr. Sembower: This exhibit is a photostatic copy of a letter dated March 14, 1951, from James H. Berge, M.D., Chairman, Grievance Committee. It is on the stationery of the Washington State Medical Association to Mr. C. E. Fullerton, Executive Secretary, Walla Walla Valley Medical Society, and I read from the third paragraph:

"Will you kindly forward a complete report on both matters, including the authority under which the Grievance Committee was acting at the time it considered Mr. Edwards' complaint, and which resulted in your letter to him on September 30; the complaint made by Mr. Brooks against Doctor Rob-

(Testimony of Miles H. Robinson.)

inson; and any other pertinent facts the Walla Walla Valley Medical Society would like to have us review before the hearing." [535]

Q. I ask you, Dr. Robinson, did you ever receive any request from the state grievance committee or any of its officers asking for you to prepare reports on the two grievances which are mentioned in this letter? A. Never. [536]

\* \* \*

Q. (By Mr. Sembower): I hand you, Dr. Robinson, Plaintiff's Exhibits 32, 38 and 41 and ask you to what matters the letters from Dr. Henderson refer?

A. Well, the first letter of November 1st refers to the grievance committee and——

Q. This was in response to a letter which you wrote him? A. Yes.

Q. And what did you state, in substance, in your letter to him?

Mr. Tuttle: Is that admitted yet?

Mr. Rosling: Yes.

Mr. Sembower: I think it was admitted on Friday.

Mr. Kimball: Will you identify it for me, Mr. Sembower? [539]

Mr. Rosling: 32, he is talking about.

Mr. Tuttle: They should be 30 and 31.

Mr. Sembower: Well, all right.

A. It says in answer to my letter of October 26th. [540]

\* \* \*

(Testimony of Miles H. Robinson.)

Mr. Sembower: And Plaintiff's Exhibit 31 for identification, purporting to be a photostatic copy of a letter from M. H. Robinson, M.D., to Dr. Elmer L. Henderson, dated October 30, 1950.

The Court: You haven't looked at that one yet?

Mr. Kimball: I think I saw it at the pretrial, your Honor, but I can't identify it.

Ask him about the writing at the bottom.

Q. (By Mr. Sembower): Dr. Robinson, I show you this copy and ask you if that is the copy of a letter, photostatic copy of a carbon copy of a letter, which you wrote to Dr. Henderson on that date?

A. Yes, it is, with the exception of a note consisting of two lines I put across the bottom.

Q. When did you add those lines?

A. I think it was added right at the time. In fact, I know [541] it was.

Q. What are those lines, memoranda to yourself?

A. Yes, that is correct.

\* \* \*

Q. (By Mr. Sembower): Now, Dr. Robinson, I hand you also Exhibits Nos. 30 and 31. Will you tell us about this exchange of correspondence between you and Dr. Henderson? [542]

A. Well, I wrote Dr. Henderson because he was the President of the AMA and I was very disturbed about this secret grievance committee and the authority which it assumed, and I thought that the American Medical Association would tell me whether I was right or not in believing that this committee was entirely improper and illegal.



(Testimony of Miles H. Robinson.)

Q. Was that the general purport of your correspondence with him as reflected in Exhibits 30 and 31?

A. Well, I notice that both letters refer to enclosed material of a bulky nature and I know that I sent him copies of all the documents that had accumulated up to that time, consisting of several of my letters and I believe the various complaints that had been made by the Edwards and Brooks.

Q. And then what was the purport of the responses which you received from Dr. Henderson as reflected by the other two exhibits?

A. Well, he wrote back on the 1st of November and said that: "I am not familiar with the fact that some of these committees are secret committees."

And then on the 8th of November, he said he could not advise me whether this grievance committee had violated the constitution and bylaws of our own society.

Q. And did he suggest in that correspondence that you do something? [543]

A. Yes, he said in his letter of November 1st: "I am sorry that I cannot tell you more, but would refer you to the President of your State Association."

Q. Now, then, referring to Exhibit No. 41, which is a copy of your letter to Dr. Partlow, will you state what that letter was?

A. Well, then, on the 13th of November, after I had heard from the AMA, I took Dr. Henderson's advice—he was President of the AMA—and I wrote

(Testimony of Miles H. Robinson.)

the President of the State Medical Association and sent him all the same material that I had sent the AMA. [544]

\* \* \*

Q. Dr. Robinson, were you aware of any appeal procedure existing in the state association which you could follow [545] in bringing the grievance committee matter before the state association?

A. Yes, I was perfectly aware of the appeal procedure.

Q. Did this letter, which is Exhibit 41, from you to Dr. Partlow conform with that appeal procedure?

A. In no respect.

The Court: I was somewhat confused about your purpose here. I thought you were trying to show that there was appeal.

Mr. Sembower: No.

The Court: It is just the other way around?

Mr. Sembower: Just the other way around, exactly.

The Court: I see; all right. [546]

\* \* \*

Mr. Sembower: I have Plaintiff's Exhibit 81 for identification, purporting to be a photostatic copy of a letter written by J. W. Holloway, Jr., on the letterhead of the American Medical Association to Ross D. Wright, M.D., and ask that it be admitted.

Mr. Rosling: What number is that?

The Court: 81.

The Clerk: 81.

(Testimony of Miles H. Robinson.)

Mr. Rosling: Will you block out the comments, please?

Mr. Sembower: Is there any objection if the comments are blocked out?

Mr. Rosling: That is all right. Mr. Sembower, that letter contains reference to some other existing litigation. I assume that you are not putting that letter in for the purpose of showing the truth of the facts alleged there with reference to that other litigation?

Mr. Sembower: No, we are not offering it for that purpose.

Mr. Rosling: It is entirely immaterial.

Mr. Sembower: That is true. I understand there is no objection to this with the mask on it.

The Court: Is that 81?

The Clerk: 81.

The Court: Very well. All right, it is [547] admitted.

\* \* \*

Q. (By Mr. Sembower): Dr. Robinson, do you recall when the next meeting of the society was held along about this time in March?

A. Yes, there was a meeting on March 27th, 1951.

Q. Did you attend that meeting? A. No.

Q. What happened so far as that meeting was concerned concerning your attendance there?

A. Well, I was never notified of the meeting and a number of other doctors were never notified of the meeting.

(Testimony of Miles H. Robinson.)

Q. Did you later learn what occurred at the meeting? [553]           A. Yes.

Q. What did take place at the meeting?

A. Well, I learned a few days later that at the meeting the grievance committee rules and regulations, to which I had been objecting, had been passed unanimously.

Mr. Sembower: Reading from Plaintiff's Exhibit 447, the new minute book of the local society, the minutes of the business meeting of the Walla Walla Valley Medical Society held at St. Mary's Hospital, March 27, 1951:

"The members present were Doctors Beaver, Brooks, Carlson, Cranor, Holmes, Keyes, King, Lange, Page, Pratt, Smith, Stevens and Tompkins."

Q. Did you later talk with the defendant Fullerton with respect to this meeting, Dr. Robinson?

A. Yes.

Q. Where did that conversation take place?

A. I am not just sure whether it was in my office or in his office.

Q. Do you remember the approximate date?

A. Well, it was two or three days afterwards.

Q. Were there any others present besides you and Mr. Fullerton?

A. No, other than other people in the office coming and going.

Q. Well, what did you say to Mr. Fullerton and what did he [554] say to you?

A. Well, I asked him why I had not been notified of this meeting, and he was very apologetic, he said,

(Testimony of Miles H. Robinson.)

“Well, it must have been because you are not on the list of doctors who are members of the bureau.” He said, “The girls in the office are inclined to send out all notices, and so on, on the basis of the doctors who are members of the bureau, rather than on the basis of the doctors who are members of the society.”

So I pointed out to him that there was a society meeting, and I was a bona fide member of the society, but he didn't seem at all concerned about it, and that was all there was to that phase of the conversation.

Well, then I asked him about the grievance committee rules and regulations which had been passed, and he agreed that they had been passed, and I said, “Well, I would like to see a copy of the new rules and regulations,” and he said, “I can't give you a copy of those.” And I said, “Well, why not? I am a member of the society and you have admitted that you failed to notify me of this meeting. I am entitled to know what went on.” “Well,” he said, “Dr. Tompkins told me that I was not to let these rules and regulations be made available to anybody until the state grievance committee held its hearing on April the 22nd.” Well, then I told him that I thought [555] that was a terrible thing to do and violated my rights, and that was about all that we talked about.

The Court: Was this a special meeting of the society?

Mr. Sembower: No, this was a regular meeting of the society.



(Testimony of Miles H. Robinson.)

The Court: Did they have regular monthly meetings?

Mr. Sembower: In the book of minutes here, it says, "Minutes of the business meeting of the Walla Walla Valley Medical Society held at St. Mary's Hospital, March 27, '51."

The Court: I was just wondering for my information, were they holding meetings once a month or a certain night or day, or what was there?

Q. (By Mr. Sembower): Could you tell us, Dr. Robinson, what the plan of the meeting was, if you know?

A. Yes, your Honor, they held meetings once a month.

The Court: In the evening?

A. They were uniformly in the evening.

The Court: On a certain day of the week?

A. The exact date was not mentioned.

The Court: Oh.

A. For these meetings, and some month they might skip a meeting, so we were in all cases notified.

The Court: Always notified?

A. Especially for the particular meeting.

The Court: I see. All right, go ahead. [556]

Q. (By Mr. Sembower): Some meetings, Dr. Robinson, appear in here as scientific meetings. Were they different meetings from the business meetings?

A. Well, that term was not entirely clear cut for the reason that quite often we would have a combined scientific and business meeting. We would

(Testimony of Miles H. Robinson.)

have a speaker to begin with, perhaps from Seattle, and then we would move into a business meeting after he had finished. Then there would be occasions when we would have only a scientific meeting and perhaps just a minimum of a few little business details taken care of. Then there would be other meetings that were strictly business with no scientific speaker. But in all cases, we were regularly notified of any meeting of the society.

Q. When did the trustees meet, if you know?

A. The trustees' meetings were entirely kept secret or not revealed to the rest of us as to when those meetings would be held. I never knew when the trustees had a meeting with a few exceptions. Sometimes in the middle of our business meeting they would say, "Well, we have a meeting of the trustees afterwards," but that was very rare.

Q. When were the meetings held of the Medical Service Bureau, if you know?

A. Well, they were usually held in conjunction with the [557] society meetings, and by that I mean at times they were completely joint. The first meeting that I ever attended of the Walla Walla Medical Bureau was a joint bureau-society meeting in which we met in the banquet room of the Marcus Whitman Hotel and had a dinner paid for by the bureau and we transacted both bureau and society business.

Q. Were there any other meetings that were held on a schedule by the bureau or the society or the trustees, that you know about?

(Testimony of Miles H. Robinson.)

A. Well, we had several of those joint meetings of dinner meetings, but I imagine they were quite expensive and we didn't keep those up, and after that we had usually a bureau meeting before a society meeting. For example, at 7 p.m. we would start a bureau meeting and at 8 o'clock we would finish with that and move right into a society meeting. That was the general pattern. [558]

\* \* \*

Q. (By Mr. Sembower): Dr. Robinson, I show you Plaintiff's Exhibit 78 and ask you if you have ever seen it before? A. Yes.

Q. What is that document?

A. That is a report of the organization of the grievance committee, the complaint by Edwards and the complaint by Brooks and of generally the controversy up until April 2, 1951, and this report—

Q. Who compiled it, if you know?

A. It was compiled by the officers and trustees and legal counsel of the society for submission to the state grievance committee in preparation for their hearing held here in Walla Walla on April the 22nd, 1951. [559]

\* \* \*

Q. (By Mr. Sembower): Handing you Exhibit No. 83, Dr. Robinson, I ask you if you recall writing this letter to Dr. Round? A. Yes.

Q. Did you in this letter express your intention to attend the meeting? A. Yes.

Q. Set by the grievance committee. Did you then later adopt a different course? A. Yes.

(Testimony of Miles H. Robinson.)

Q. Why did you adopt the different course?

A. The main reason that I told him a few days later that I would not attend this meeting was because I had looked up in the constitution and by-laws and it was perfectly clear that the meeting to which he wished me to come was [562] entirely improper and in violation of our constitution and by-laws, and that if I should attend it, I would waive all my rights to have the due process of the society followed.

The Court: You have reference, Doctor, to the bylaws and constitution of the local society, the Walla Walla society?

A. Well, sir, as a matter of fact I have reference to both organizations.

The Court: I just wondered. You said our constitution and bylaws. I just wanted to be sure that I understood you because, of course, I assume that there are different provisions of the state and the local society. It wasn't clear to me which one you had in mind, or both.

A. Well, I had in mind the local society, but, as a matter of fact, the provisions of both organizations are the same.

The Court: I see; all right.

Mr. Rosling: If your Honor please, if he now attributes his answer as having related to the state constitution, then I ask that it all be stricken as a mere conclusion of the witness that the state grievance committee was invalid or in violation of any constitutional or bylaw provision of the state. That



(Testimony of Miles H. Robinson.)

is purely the witness' conclusion. If he wishes to express his opinion, "I thought it was," I would have no objection, but when he says it was, as an accomplished fact, to that I [563] object.

The Court: Well, I think probably I was responsible for eliciting this last answer. I just wanted to be clear as to what the witness' testimony was. I won't assume that it is proving a fact, it is simply giving his reasons.

Mr. Rosling: Very well.

The Court: I will construe the whole thing as giving his reason for his not attending.

Mr. Rosling: Very well.

The Court: And not proof of the fact of what the bylaws are. [564]

\* \* \*

Mr. Sembower: I have Plaintiff's Exhibit for Identification No. 88, purporting to be a letter on Washington [565] State Medical Association stationery, dated April 11, 1951, from James H. Berge, M.D., to Miles H. Robinson, M.D., and ask it be admitted.

The Court: That is number——

The Clerk: 88.

The Court: 88. It will be admitted. [566]

\* \* \*

Q. Dr. Robinson, did you receive the letter which has just been introduced in evidence?

A. Yes.



(Testimony of Miles H. Robinson.)

Q. What did you do after you received the letter, if anything, related to this matter?

A. What was the date of that letter?

Q. This was the letter from Dr. Berge to you dated April 11, 1951. I will show it to you.

A. I think the next thing I did was to go over to see Dr. Berge in Seattle.

Q. About when did you make that trip to Seattle to see Dr. Berge?

A. Let's see, that letter was dated when?

Q. April 11th.                      A. I went over——

Q. 1951.

A. I went over right away, the next day, I think.

Q. Did you have a conversation with Dr. Berge in Seattle?

A. Yes, I had quite a talk with him in his office.

Q. And about what time of day was it?

A. I think it was in the morning not long after the train got in over there. [568]

Q. Anyone else present during the conversation?

A. Well, his secretary let me in the office and she was nearby, but he and I talked in his consultation room.

Q. Well, in your own words tell us the substance of what you said to him and what he said to you.

A. I pointed out to him right away that as far as I could tell from reading the constitutions of the Walla Walla society and of the state society, that this state grievance committee hearing was totally irregular, and that our procedures were very simple as to what to do about any charges that might be

(Testimony of Miles H. Robinson.)

brought and that any state grievance committee hearing was neither specified nor fitted in and, in fact, was in conflict with our regular procedures.

I also reminded him that I had brought no charge against the Walla Walla society. I told him that I had filed charges with the Walla Walla society against our secret committee, which was composed of men that I didn't even yet, as I recall, know who they were.

Q. Did you tell him where you had filed those charges?      A. Oh, yes.

Q. Where did you say you had filed those charges?

A. I said I had filed them with our local society, and I pointed out to him that we had two pages of procedures as to just how charges are handled. [569]

Q. You say, "We had"; to what do you refer?

A. The Walla Walla society. And I told him that the regular procedure was for these charges to be investigated by the board of trustees, any charges, any complaints, and then the board of trustees was supposed to look into the matter and to try to take kindly efforts to solve it and, if it was necessary, they would prepare a report and send or bring this report before the entire membership of the society met in a regular meeting and then at that time in a democratic way a vote would be taken on these charges to decide what should be done about them.

I told Dr. Berge that that was very simple, that it was stated in our constitution and confirmed in

(Testimony of Miles H. Robinson.)

the state constitution, and I just couldn't understand why we were having this by-pass procedure around through the state grievance committee which was violating everything that I thought we were supposed to do.

Well, then Dr. Berge told me what had happened. He said in September of 1950, the state medical association had authorized a state grievance committee and laid down some of its rules, stating further in that authorization that further rules and regulations would be set forth and ten days after those rules and regulations were published in Northwest Medicine, they would become [570] effective on the entire profession in the state of Washington.

He then described to me in some detail what those rules were and pointed out they had been published in Northwest Medicine on the 16th of February, and he pointed out that these new rules gave this state grievance committee original jurisdiction, I believe was the term that he used, to reach in and pass upon a complaint anywhere in the state of Washington without regard to anything that a local society might do or might be doing.

And then he said to me—well, I said to him, “Well,” I said, “that is a tremendous power that you have set up. It by-passes all our local democratic power, so that a man is not going to be judged by peers in his own town, he is going to be judged by somebody who never heard of him over in Seattle or wherever the state grievance committee is located.”

(Testimony of Miles H. Robinson.)

And he said, "Yes," and this I will never forget, he said, "the power of this committee terrifies me"; now, he used those exact words.

Well, I sat back and I was very concerned.

Q. Did Dr. Berge make any comments about the relationships between the state association and office staff and the local society office staff? [571]

A. Yes, indeed, he did. He went on to speak of Ralph Neill, who is the executive secretary of the state medical association, and he gave me clearly to understand that Ralph Neill was——

Mr. Rosling: If your Honor please, I am going to object to the understanding which was created in this man's mind. I think he should be confined to reciting what the conversation was, just as he has done in the past.

The Court: Yes, I know it is impossible for anyone to remember word for word exactly what was said——

Mr. Rosling: I realize that.

The Court: ——in a conversation, but I think it would be more helpful to the Court if the witness would testify to what each one said in substance as nearly as he can remember, rather than drawing conclusions and stating what understandings were, because the understanding necessarily must be the witness' understanding.

Mr. Sembower: Yes.

The Court: And I don't know whether it is correct or not unless I know what was said.

Mr. Sembower: Exactly.



(Testimony of Miles H. Robinson.)

Q. Will you, then, Dr. Robinson, state just as clearly as you can what you said to Dr. Berge and what he said to you in this colloquy?

A. Well, Dr. Berge said, in substance, that Ralph Neill, the [572] executive secretary of the state association, is the most important man that we have to deal with and he said, "Furthermore, Neill has a private line to those fellows over in Walla Walla." Now, those are practically his exact words.

Q. Was there any further conversation about things you said to him and he said to you?

A. Well, we did talk a good bit about the fact that both he and I were alumni of the same medical school, the University of Pennsylvania. And, oh, yes, he said, "I am very anxious to have you attend this meeting of the state grievance committee."

Q. Did you state to him——

A. And I asked him why.

Q. And did he answer that, in substance?

A. And he said, "We are just getting this thing started, and we feel that this committee is very important for the welfare of the profession and to keep the public happy and we want very much to have you attend."

I don't recall exactly whether I said I would come or not. I think I temporized because I—well, that is my conclusion, but that was about all there was to it.

Mr. Sembower: I have Plaintiff's Exhibit 90 for identification, purporting to be a photostatic copy of a letter from C. E. Fullerton, executive secretary,



(Testimony of Miles H. Robinson.)

to James H. Berge, [573] M.D., and ask that it be admitted in evidence.

The Court: It will be admitted, Plaintiff's 90.

The Clerk: 90.

(Whereupon the said document was admitted in evidence as Plaintiff's Exhibit No. 90.)

Mr. Sembower: Reading from the exhibit:

"Dear Dr. Berge:

"Upon referral of your letter of April 11 to Dr. Tompkins, he instructed me to inquire whether or not your reference to Dr. Carlson was not in error since Dr. Carlson was neither an officer of the society nor a member of the grievance committee during 1950.

"Dr. Tompkins also requested that I repeat his request of the 11th for a copy of the complaint of Dr. Robinson against the society since, unquestionably, such a complaint must have been filed in view of the captions to your letters, and this society has never been advised thereof or been furnished with a copy."

Q. Dr. Robinson, did Mr. Fullerton ever ask you if you had filed a complaint? A. Never.

Q. Against the society. Did Dr. Tompkins ever ask you if [574] you had filed a complaint against the society? A. No.

Q. Did you receive any further inquiries from Dr. Berge as to whether you had filed a complaint or not?

A. Dr. Berge wrote me one letter, which may

(Testimony of Miles H. Robinson.)

have already been mentioned a few minutes ago, telling me to come to the meeting, and I don't believe he referred again to any such complaint against the society, but I did. I wrote him, I wrote him, I think, in my final letter and pointed out that I never had——

Mr. Rosling: Just a moment; until that letter is introduced in evidence, I object to him telling us the contents of it.

The Court: Yes, the letter would be the best evidence.

Mr. Sembower: I have Plaintiff's Exhibit 92, purporting to be a copy of the letter from Miles H. Robinson, dated April 13, 1951, to James H. Berge, and ask that it be admitted.

The Court: It will be admitted. [575]

\* \* \*

Q. Is this the letter, Dr. Robinson, to which you have just referred in your testimony?

A. Yes.

Q. You state in your letter that there has been a violation of what you call "due process." "It now seems clear to me that I would thereby throw away my right to insist that the due process set forth in our constitution must first be fulfilled before the state association intervenes."

To what constitution do you refer there?

Mr. Kimball: I think the letter speaks for itself, your Honor.

The Court: I will overrule the objection. I think he may state what constitution he refers to.

(Testimony of Miles H. Robinson.)

A. Could you read that last part so I could be sure?

Q. (By Mr. Sembower): I read the sentence in which you state that, "I would thereby throw away my right to insist that the due process set forth in our constitution must first be fulfilled before the state association intervenes," and I ask you to what constitution you referred there?

A. The Walla Walla society constitution. [578]

Q. Dr. Robinson, what steps are provided for under the Walla Walla society constitution for the handling of disciplinary proceedings of this kind?

Mr. Kimball: I would like to raise an objection that the constitution and bylaws are in an exhibit here already and you can point them out to him.

Mr. McNichols: We are getting them out, your Honor.

The Court: I beg your pardon?

Mr. McNichols: We are getting them out now.

The Court: Yes. All right.

Mr. Sembower: I will withdraw the question.

The Court: All right.

Q. (By Mr. Sembower): Referring to Defendants' Exhibit 429, Constitution and Bylaws, Walla Walla Valley Medical Society, dated 1949—and it has been admitted—Dr. Robinson, was it the provisions of the constitution and bylaws as set forth in Defendants' Exhibit 429, were these the provisions you referred to in your letter as "due process"?

(Testimony of Miles H. Robinson.)

A. Yes, they were, if that is the date of about 1949.

Q. 1949. On the constitution.

A. There might have been one or more editions, although I don't—

Q. I will hand you the exhibit.

A. I don't think so. Yes, this is what I [579] referred to.

Q. Dr. Robinson, if you will refer to Chapter II among the bylaws in the exhibit, Discipline of Members, and will you tell us what in the procedures to date that had been done or conducted, constituted violations of the bylaws?

A. Well, taking the complaint that the Edwards made against me that they had not received service justifying the charge of a dollar and a half that I made on them, so far as I can tell, none of the procedures were followed in any respect on that complaint. For example, it says here that anyone can file a complaint with a member of the society, but the charges must be in written form.

Mr. Tuttle: Are you talking about the Edwards' complaint now, Doctor?      A. Yes. [580]

\* \* \*

Q. Well, now, Dr. Robinson, in connection with your letter here to Dr. Berge, what did you have in mind concerning the due process as it relates to the Edwards matter?

A. I had in mind that the Edwards had never filed a written complaint anywhere, because Mr.

(Testimony of Miles H. Robinson.)

Fullerton typed up the complaint rather than Mrs. Edwards.

The Court: You don't have to give reasons, you can simply point out that there wasn't any written complaint. I don't think there is any evidence of any written complaint.

Mr. Sembower: No, that is correct.

The Court: Now, that is what he had in mind. Anything else he had in mind?

Q. (By Mr. Sembower): What else did you have in mind?

The Court: This is going to take long enough if we go right down the line on factual testimony. I don't think we should go off into side roads any more than we have to.

Mr. Sembower: Yes.

A. Well, everything else that I would have to say about the Edwards complaint would be that nothing else was done according to the procedures.

Q. Of course, there was no complaint filed. Were any [583] charges ever preferred upon you?

A. I never saw anything. I didn't see a copy of what Mr. Fullerton took down from Mrs. Edwards until three years later when we subpoenaed it.

Q. Was there any investigation made by the board of trustees of the Edwards complaint?

A. Well, yes, there was. I would be wrong on that point.

Q. No——

A. Oh, by the trustees? You are right, that is to say, there was no investigation by the trustees,



(Testimony of Miles H. Robinson.)

and my momentary confusion, I was thinking of the fact that Dr. Stevens stopped me on the street and inquired about it, but he was not a trustee, so the answer is there was no investigation by the trustees, there was no presentation of any complaint of Mrs. Edwards to the society, there was no report made to the society, and there was no vote taken by the society.

Q. Were any kindly efforts in the interest of peace, conciliation, or reformation undertaken in connection with the Edwards complaint?

A. Well, nothing was done by the trustees, who are the ones authorized to make such efforts, so the answer would be no to that question.

Q. Now, with respect, Dr. Robinson, to the Brooks' complaint, was a complaint there prepared in writing? [584]

A. The situation was the same with the Brooks complaint in my understanding, as I understood it. Mr. Brooks—well, to begin with, and this is the most important point, I think, really, Mr. Brooks telephoned the lay secretary of the society and made the complaint over the phone.

The Court: Now, this isn't factual testimony. Do I have to tell counsel that this is not the sort of testimony that is admissible in a court of law?

Mr. Sembower: No.

The Court: How could he possibly know that, that Mr. Brooks telephoned the society?

Mr. Sembower: Yes.

(Testimony of Miles H. Robinson.)

The Court: That is a conclusion of the witness, it could be nothing more than hearsay.

Mr. Sembower: That is correct.

The Court: Now, I think that we should have the rules of evidence observed here and I am going to insist upon it.

Mr. Sembower: Absolutely.

Q. If you would just, Dr. Robinson, respond to the question directly as I ask it. A. Yes.

Q. Then we will cover these matters as they should be covered, of course.

Were any charges presented to you in [585] connection with the Brooks complaint? A. No.

Q. Did the board conduct an investigation of the Brooks complaint, the board of trustees?

A. Yes.

Q. Of what did that investigation consist, if you know? A. They held a hearing.

Q. And when was that hearing?

A. November 21, 1950.

Q. And was a copy of the Brooks complaint sent to you, a statement prepared by Brooks?

The Court: He has testified to that, hasn't he? Isn't it in evidence here?

Mr. Rosling: He said he never received one.

The Court: I beg pardon? There is an exhibit here.

Mr. Sembower: Yes. What we wish to bring out is the distinction between this as a statement and as a charge.

(Testimony of Miles H. Robinson.)

The Court: Wouldn't that be counsel's function in argument?

Mr. Sembower: Perhaps it would be. I point out that distinction.

Q. Well, now, Dr. Robinson, did you attend the meeting that was held of the state grievance committee which was held in Walla Walla on April the 22nd, 1951? A. No. [586]

Mr. Sembower: I have Plaintiff's Exhibit 93 for identification, purporting to be a copy of a letter on Washington State Medical Association letterhead, signed by James H. Berge, to Mr. C. E. Fullerton, executive secretary, and ask that it be admitted in evidence.

The Court: It will be admitted.

(Whereupon the said document was admitted in evidence as Plaintiff's Exhibit No. 93.)

Mr. Sembower: Reading from the letter:

"Thank you for your letter of April 10, 1951. The meeting will convene at 10 a.m. at the place designated by you. My letter of April 11 evidently crossed yours in the mail, for in it I gave the order in which the witnesses will be called.

"Dr. Robinson was recently in Seattle and in conversation with me objected to the use of Miss Curts as a court stenographer. We would like to oblige him in this matter and, if possible, I wish you would obtain the services of another stenographer who is qualified as a competent court reporter.

"In reply to paragraph one of your letter of

(Testimony of Miles H. Robinson.)

April 12: It was my intention to have the [587] secretary of your society for the year 1950 present at the hearing. (I had presumed it was Dr. Carlson.) I would like to have him bring the minutes of (a) the society's meeting at which the grievance committee was formed and (b) the minutes of the meeting of your society wherein a vote was taken regarding the abolition of the grievance committee. If your 1950 secretary is not available to give these minutes, then perhaps Dr. Page might present them.

“With reference to paragraph two of your letter: Please find enclosed copy of my letter of even date to Dr. Tompkins.”

Q. Dr. Robinson, what arrangements were made at the meeting for reportorial services, if you know?

A. Well, they went ahead and had Miss Curts and I was——

The Court: Miss Curts?

Mr. Sembower: Miss Curts, C-u-r-t-s.

The Court: Oh. [588]

\* \* \*

Q. Dr. Robinson, I show you Plaintiff's Exhibit 98 for identification and ask you if you have seen that before? A. Yes.

Q. Where did you last see it before?

A. Well, a few months ago we obtained it on subpoena.

Q. Where was the subpoena served and under what circumstances did you procure it? [609]

A. Well, it says in the lower left-hand corner “Plaintiff's 146, October 22nd, 1955.”



(Testimony of Miles H. Robinson.)

Q. Does that refresh your independent recollection where you may have obtained that?

A. Oh, yes, it was obtained at that time at the depositions of the defendants.

Q. Held at Seattle approximately what date?

A. It was held in Seattle October 22nd, 1955, and has the initials of the reporter: "IJS" on it.

Q. Do you recognize the signature on the lower right-hand corner?

A. Yes, I have had letters from Dr. Rownd.

Q. And is that Dr. Rownd's signature, to the best of your knowledge?

A. Yes, it is.

Mr. Sembower: I offer this in evidence.

Mr. Rosling: May I see it, please?

Mr. Sembower: It is number 3. I offer Exhibit 98 in evidence.

The Court: Is there any objection to this?

Mr. Rosling: No objection.

The Court: It will be admitted, then. [610]

\* \* \*

Mr. Sembower: \* \* \* I have Plaintiff's Exhibit 106 for identification, purporting to be a letter from James H. Berge to Miles H. Robinson, dated May 7, 1951, on Washington Medical Association stationery, and ask that it be admitted.

The Court: It will be admitted.

(Whereupon the said letter was admitted in evidence as Plaintiff's Exhibit No. 106.)

Mr. Sembower: This exhibit states: [615]

"Please find enclosed copies of the decisions of



(Testimony of Miles H. Robinson.)

the Washington State grievance committee in the above-entitled actions. These decisions have been approved by the board of trustees and bear the signature of the president of the Washington State Medical Association.”

Q. Dr. Robinson, did you receive this letter?

A. Yes.

Q. Was the enclosure included in the envelope?

A. Yes. [616]

\* \* \*

I have Plaintiff's Exhibit 103 for identification, purporting to be a photostatic copy of a letter by James H. Berge, M.D., to Mr. Thomas R. Brooks, and ask that it be admitted.

The Court: It will be admitted.

(Whereupon the said letter was admitted in evidence as Plaintiff's Exhibit No. 103.)

Mr. Sembower: This exhibit reads:

“Dear Mr. Brooks:

“Please find enclosed copy of decision of the Washington State grievance committee in the above-entitled action. This decision has been approved by the board of trustees and bears the signature of the president of the Washington State Medical Association.”

Q. Dr. Robinson, when did you first know that Tom Brooks received direct notice of this verdict?

A. In approximately 1953 when we subpoenaed the records.

Q. Do you recall, Dr. Robinson, of a regular

(Testimony of Miles H. Robinson.)

meeting being held by the society on or about May the 10th, 1950?

A. I believe there was such a meeting then.

Q. Do you recall what took place at that meeting?

A. I would like——

Mr. Kimball: Would you give that date again, please? [618]

Mr. Sembower: May the 10th, 1950.

Mr. Rosling: '51, you mean.

Mr. Sembower: '51.

The Court: '51.

A. I would like to refresh my recollection from the minutes, if I may.

Q. (By Mr. Sembower): I show you Plaintiff's Exhibit 447, which is the minute book opened to the minutes of the scientific meeting of the society held May 10th.

A. Yes, I recall now an announcement was made at that meeting that a later meeting would be held on the 29th of May at which would be read the findings, I believe, and the recommendations of the Washington State Medical Association grievance committee in the matter of Brooks versus Robinson.

Mr. Sembower: I will read the minute as it appears in the proceedings:

“President Tompkins called the meeting to order and announced a business meeting of the society would be held May 29th to transact the regular business of the society and to hear the report of the state grievance committee on the charges of Dr. Robinson versus the Walla Walla Valley Medical

(Testimony of Miles H. Robinson.)

Society and the complaint of Thomas R. Brooks versus Dr. Miles H. Robinson, and that a [619] bulletin would be subsequently issued giving the exact time and place of the meeting.”

Q. Dr. Robinson, from the announcement at the meeting of the 10th to which you have just testified, what did you understand the proceedings as scheduled, May the 29th, to involve?

A. Well, I took it entirely literally, just as it says, that they would read this nine-page report of the state grievance committee at that meeting.

Q. Did you take any steps to find out whether that was the correct interpretation to be placed upon Dr. Tompkins’ announcement? A. Yes.

Q. What did you do?

A. I asked one or two of the doctors what they thought would happen there, and we all agreed that there would merely be the reading of this report and just more delay that we had had for the last six months on the matter.

Mr. Kimball: Counsel, in asking about this meeting, did I understand you read all the minutes of that meeting?

Mr. Sembower: I read only the major paragraph. Do you wish me to read it all?

Mr. Kimball: I would appreciate it if you would.

Mr. Sembower: Well, the first paragraph states: “The meeting was preceded by the customary social [620] hour beginning at 6:30 p.m. and followed by a dinner. There were 37 present.”

Then there is the paragraph that I read. Then:

(Testimony of Miles H. Robinson.)

“Secretary Carlson then introduced the speaker of the evening, Edward W. Hamacher, M.D., of Spokane, Washington, who spoke on plastic surgery.

“The meeting adjourned at 9:50 p.m.

“C. E. FULLERTON,

“Executive Secretary.”

There is an asterisk here inserted opposite the date mentioned in the paragraph above, which in that paragraph is 29, and the asterisk says: “The date of the meeting was later changed to May 22nd, 1951.”

Q. Do you remember talking specifically to any individual member of the society concerning this matter, Dr. Robinson?

A. Yes, I remember talking to Dr. Potts.

Q. Where did that conversation take place, if you recall?

A. It was one or the other of the two hospitals.

Q. Do you remember about the time it took place?

A. I don't remember the time of day, no.

Q. Anyone else present?

A. No, we just——

Q. What did he say to you and what did you say to him about this matter? [621]

A. I asked him if he knew what would happen at the next meeting.

Q. And what did he say?

A. Well, then I went on to tell him—let me——



(Testimony of Miles H. Robinson.)

Q. It would be helpful if you could just as nearly as possible tell the Court how you put it in words substantially and how he put it in words to you.

A. The reason I hesitated was because my conversation with him was after a letter and notice was sent to me by Dr. Tompkins essentially the same as this announcement in this meeting you have just read. But, in any case, the conversation was on exactly the same subject and I asked him if he had received the notice, and he said "Yes." And I said, "What do you think will happen there?" And he said, "Well, it says they are going to read some kind of a report."

Well, then I told him that I had got a copy of that report and that the state society was recommending to the local society that I be expelled or suspended.

Q. And what did he say?

A. Well, that didn't seem to surprise him greatly, and he said, "Well, apparently, they are going to read this report," and then he said, "I don't think anything is going to happen," and I said, "Well, that is what I think, too." And that is all that I said to him. Then I either [622] called or telephoned Dr. Platner—

Q. Dr. who? A. Platner, P-l-a-t-n-e-r.

Q. Yes. A. And I asked—

Q. You recognized his voice when you called him on the telephone? A. Oh, yes.

Q. You were familiar with his voice?



(Testimony of Miles H. Robinson.)

A. I may have spoken to him personally, but I remember distinctly contacting those two men.

Q. What did Dr. Platner say to you and what did you say to him, as nearly as you can remember?

A. Well, I said the same thing to him that I had said to Dr. Potts.

Q. And what did he say?

A. And he didn't say very much about it.

Q. Did he express any opinion?

A. Well, all that I can recall is that, in substance, he conveyed to me the idea that he agreed with Dr. Potts and myself.

Q. Not the idea he conveyed to you, but what did he say to you, as nearly as you can recall?

A. Well, that nothing would happen.

Q. Did you talk with any other members of the society [623] that you recall?

A. No, I didn't talk with any others.

Q. Did you talk with any of the officers of the society or the trustees?

A. No, there was so much hostility, I didn't feel I could talk to anyone else.

Q. Did you suspect, Dr. Robinson, that there would be a move on the night of the 22nd, which was the date finally selected for the meeting, to expel you?

A. Well, I was fearful that something would be done, but as I thought it over I decided that surely they would not do anything like expelling me because it wouldn't be following our procedures.

Mr. Sembower: I refer to the minutes of the

(Testimony of Miles H. Robinson.)

meeting of the board of trustees of the Walla Walla Valley Medical Society held at the Marcus Whitman Hotel, Tuesday, May 15, 1951, as contained in Defendants' Exhibit 447:

“The members present were: Doctors Tompkins, Beaver, Carlson, Pratt and Page, and C. E. Fullerton, Executive Secretary.

“The application of Herman Hindin, for membership in the society, was read by the executive secretary. Dr. Pratt moved, seconded by Dr. Carlson, the application be tabled pending further investigation. Motion carried. President [624] Tompkins was instructed to conduct the additional investigation.

“The executive secretary read a letter from the attorney for the Washington State Medical Association approving the amendments to the local society's bylaws, which have been properly submitted and read for the first time at the meeting of March 27, 1951, and ordered submitted to the state association for their approval. Since the amendments are now ready for adoption, executive secretary was instructed to mimeograph the amendments, furnish a copy to all members prior to the membership meeting on May 22nd.

“The executive secretary read a letter from James H. Berge, M.D., chairman of the state grievance committee of the Washington State Medical Association, advising that the state committee was preparing a uniform set of rules and regulations for the use of the county society grievance committees. In view of the probable delay in their receipt, the

(Testimony of Miles H. Robinson.)

board instructed the executive secretary to submit mimeographed copies of the rules and regulations previously drafted by a committee of the local society to the membership for action at the meeting to be held May 22nd. [625]

“President Tompkins requested the board to recommend three doctors to serve as a local grievance committee. The recommendations of the board were as follows: Dr. Stevens, for one year; Smeltzer, for two years; Lange, for three years, and Yengling, alternative.

“President Tompkins read the findings of the state grievance committee in the complaint of Miles H. Robinson, M.D., versus the Walla Walla Valley Society, and the complaint of Thomas R. Brooks versus Miles H. Robinson, M.D. Dr. Beaver moved, seconded by Dr. Carlson, that the board of trustees, in accordance with the findings of the state grievance committee, finds Dr. Miles H. Robinson guilty of violating the principles of Chapter II, Section 2, of the current code of medical ethics of the American Medical Association. Motion carried unanimously. Dr. Beaver moved, seconded by Dr. Carlson, that, in accordance with the recommendations of the state grievance committee, the board of trustees recommends that Miles H. Robinson be sentenced to a suspension of membership in the Walla Walla Medical Society for a period of six months. Motion carried unanimously.”

Q. Dr. Robinson, did you know anything about this action [626] taken by the board of trustees?

(Testimony of Miles H. Robinson.)

A. No, I had—the only thing that I knew was that five days earlier, on the 10th, I had received a letter from Dr. Tompkins summoning me to the meeting of May the 22nd, 1951.

Mr. Sembower: I have here Plaintiff's Exhibit 107 for identification, purporting to be a letter from Morton W. Tompkins, president of the Walla Walla Valley Medical Society, on Walla Walla Valley Medical Society stationery addressed to Miles H. Robinson, M.D., and ask that it be admitted.

The Court: 107.

The Clerk: 107.

The Court: It will be admitted. [627]

\* \* \*

Q. Is that the letter to which you have just referred in your testimony, Dr. Robinson?

A. Yes, that is.

Mr. Sembower: I have Plaintiff's Exhibit 108 for identification, purporting to be a duplicate original of a notice of regular monthly business meeting to be held by the Walla Walla Valley Medical Society, Tuesday, May 22nd, 1951, at 8 p.m., in the classroom at St. Mary's Hospital, and ask that it be admitted.

The Court: It will be admitted.

(Whereupon the said document was admitted in evidence as Plaintiff's Exhibit No. 108.)

Mr. Sembower: And I will read this short announcement:

“Pursuant to Chapter 3, section 1, paragraph B



(Testimony of Miles H. Robinson.)

of the bylaws of the Walla Walla Valley Medical Society, I, Morton W. Tompkins, president, herewith call a regular business meeting of the membership of the society to be held Tuesday, May 22nd, 1951, at 8 p.m. in the classroom of St. Mary's Hospital.

"In addition to the regular matters to come before the membership at this meeting, there will [628] also be read the findings and recommendations of the state grievance committee of the Washington State Medical Association in the matter of Thomas R. Brooks versus Miles H. Robinson, M.D.

"/s/ MORTON W. TOMPKINS,

"President, Walla Walla

Valley Medical Society."

Q. Did you receive a copy of this notice?

A. Yes, they both came in the same envelope.

Q. Dr. Robinson, when you received the copies of those notices, did you infer from them that a proceeding would be conducted which would lead to your expulsion from the society?

A. No, I did not come to that conclusion.

Q. What was the conclusion that you did come to?

A. I thought there would just be more run-around that we had had for the last eight months.

Q. You did not feel that there would be any conclusive action taken at that meeting?

A. I didn't see how there could be.

Q. What did you do, if anything, about preparing for the meeting?



(Testimony of Miles H. Robinson.)

A. I finally sat down and wrote out a short summary of my position and planned to read it at the meeting.

Q. Did you do anything else besides preparing this statement? [629]

A. Well, I previously mentioned I talked to Dr. Potts and Dr. Platner.

Q. Did you talk to the defendant Mr. Fullerton?

A. No, not that I recall. [630]

\* \* \*

Q. Dr. Robinson, during the period immediately preceding the meeting on May 22nd, 1951, did you get any intimation in advance of what the result was likely to be?

A. No intimation of any kind whatever.

Q. Was there any incident which occurred that caused you apprehension immediately preceding the hearing? A. Yes, I do remember one.

Q. What was that?

A. The very afternoon of the day when we had that meeting that night where I was expelled, an acquaintance friend of mine, Guy Hawkins, came by the house, and he said, "I hear you are leaving town."

Mr. Kimball: Just a moment. I think that is pure hearsay, your Honor.

The Court: Who was this conversation with?

A. It is with Guy Hawkins I had this conversation.

The Court: I see. Mr. Hawkins is not a defendant?

(Testimony of Miles H. Robinson.)

Mr. Sembower: He is not a defendant.

The Court: Well, it is hearsay, then. Objection sustained.

Q. (By Mr. Sembower): Did you make any other preparation, Dr. Robinson, for this meeting on the 22nd other than those which you have already testified to?

A. I read the constitution and by-laws and I was convinced——

Q. Well, did you make it a point to ask any persons to be [632] present at the meeting?

A. No, I didn't.

Q. All right, did you attend the meeting then on May the 22nd, 1951?      A. Yes, I did.

Q. About what time did you arrive at the meeting?      A. I arrived about five minutes of eight.

Q. And where was the meeting held, if you recall?

A. In the classroom in the basement of St. Mary's Hospital.

Q. Will you describe now in your own words what you found when you arrived at the meeting and how the meeting got under way?

A. Well, I came down there ten minutes of eight and when eight o'clock came, the meeting which was already going on in the room wasn't over.

Q. Did you know what that meeting was?

A. No, I didn't know what it was then. I learned later.

Q. What did you later find out that it was?

(Testimony of Miles H. Robinson.)

A. That it was a Bureau meeting which had started as seven o'clock.

Q. You say a bureau meeting, what do you mean by that?

A. Well, that is the synonym for the Walla Walla Valley Medical Service Corporation.

Q. All right, now, will you go ahead and tell us about what you saw and heard at the meeting as nearly as you [633] can recall?

A. At about twenty minutes after eight, the meeting of the bureau broke up and one or two men stepped out and I went in. There was quite a large group of members present, and after only a few minutes, I wouldn't say more than five or six minutes, the new meeting started right up. And I was impressed at the time that very few people left the room between the two meetings. The meeting was called to order and we had a great deal of business that night.

Q. What did that business, in general, relate to as you recall?

A. Well, it was the most business, I think, that I had ever seen at a meeting of the society. One of the things, we started off with a number of things before they got to the reading of the report about me.

Q. What were those things, Dr. Robinson, if you remember?

A. Well, they had new amendments to the constitution and bylaws that had recently been ap-

(Testimony of Miles H. Robinson.)

proved by the state and they passed those that evening.

Q. What did those amendments relate to?

A. They related to membership and dues of members.

Q. And then what was the next order of business, if you remember?

A. Well, the next really big order of business was approval [634] of the rules and regulations of the grievance committee, which we had been struggling over ever since September, 1950, and——

Q. Were these the same rules that had been considered at earlier meetings you had attended?

A. Well, the rules had been changed about four times and by that time I didn't know what the rules were that we were considering. I believe, though, that these rules were very much the same as those which were passed at the meeting of March 27th, to which I was not invited, and they were to be re-passed that night and they were, but the way it was done, these rules, consisting of two and a half pages I think it was, they were all—they were read at the meeting. Then we voted on them and they were passed and with, I think, a lone dissenting vote, which was mine.

Q. And then what happened, if you recall?

A. It seems to me that there was some more routine business of some kind that took place before they got around to the business about me.

Q. And then after that routine business, what took place?



(Testimony of Miles H. Robinson.)

A. Well, then we had a tremendous reading session and it was done in relays.

Q. What was read to the membership, if you remember?

A. They read the nine pages of the state grievance committee [635] report.

Q. Who read that, Dr. Robinson, if you remember?

A. Well, it was in two sections and I believe Dr. Tompkins, who was in the chair, no, he wasn't, I think it was Dr. Page, but one of the two—he read the first part of it which dealt with my so-called complaint against the society, and when he got done reading, without a moment's, without sixty seconds' interruption, so there could be no discussion on the matter, he turned immediately to Dr. Carlson and said, "Now it is your turn." And Dr. Carlson stood up and he read Decision No. 2 from the state medical association on the Brooks complaint against me, and when that was over with—that was about five pages, very slowly and carefully read—without a moment's interruption, not a moment, Dr. Carlson turned to Dr. Tompkins and Dr. Tompkins stood up and read the minutes, I think, of the board of trustees back on December 13th when they had referred the complaint against me to the state, and those minutes were read very completely. Then without a moment's hesitation, still no discussion of any kind, it was turned back to the other man, whoever it was by now, and he got up, as I recall, and started to read from the



(Testimony of Miles H. Robinson.)

transcript of the November 21st hearing, which was six months ago, which had been called by the trustees to [636] hear the Brooks and hear myself, and he read, whoever was reading then, read long excerpts from that transcript, still no discussion of any kind.

Well, when they got done with that, then without a moment's interruption and absolutely no discussion, as I recall, they called in—they turned to the other fellow, whoever had been reading before, and he got up and read the minutes of the trustees of about ten days before of our society, in which those trustees had confirmed the recommendations of the state grievance committee. Well, then, we got done with that, and by that time I can tell you positively it was about 10:30 o'clock at night.

Q. Examining the Exhibit 447 for the meetings that you have detailed, the minutes appear to be approximately twenty pages. Would that seem reasonable, would that be your recollection?

A. Indeed, it was.

Q. Then what happened after the hour of 10:30, as you have testified, arrived?

A. Well, there was a great deal of fidgeting in the room, I can assure you. There was quite a few old men there and they had been there since 7 o'clock and hadn't even been out of the room, but I could see that if there was anything I could do, I would have to do it now. So I got [637] out two photostatic copies of page 29 of that November 21st hearing and that—

Q. For the record, that is contained in Exhibit

(Testimony of Miles H. Robinson.)

242, which has been admitted, and is page 29 of that exhibit.

Proceed, Dr. Robinson.

A. That particular page contained the statement that Mr. Edwards conceded that I had not revealed syphilis to his father-in-law, and I passed three copies of that around among the members so that they could see the falsity of this whole charge.

After I had done that, I then said that I would like to read my little summary of my position, which I then did.

Q. What happened after that?

A. Well, immediately after that—well, I forgot something. Right after I passed around this page 29 showing that Edwards had denied that I had told him this thing, Dr. Tompkins or Page, whoever it was, stopped the meeting and called in Mr. Edwards himself, who had been sitting out in the hall outside in the basement there in St. Mary's chatting with Fullerton and Tom Brooks.

Q. Is that Mr. Noel Edwards, the defendant in this case?      A. Yes.

Q. Had you seen them in the outer hall there sitting together, Fullerton, Brooks and Edwards? [638]

A. I don't believe that I had.

Q. How did you know they were out there?

A. Well, because they were there when I was sent out of the meeting later, and they may have got there when I got there ten minutes of eight, but when I said I didn't think so, I just don't recall.

(Testimony of Miles H. Robinson.)

Q. You did see them there later on, is that correct?  
A. That is what I had in mind.

Q. Now, Doctor, you say Dr. Thompson, or Dr. Page, whoever it was. Do you remember whether it was Dr. Tompkins or Dr. Page, or was it some third person, to the best of your recollection?

A. Well, the minutes will show who was in the chair and whoever was in the chair was the one that called in Noel Edwards.

Q. All right. Well, proceed, Dr. Robinson. What happened next?

A. Well, Noel Edwards came in and the man in the chair said, "Dr. Robinson says that you said that he never told you that your father-in-law had syphilis." And Edwards stood up and said, "Well, what I meant to say was that he used the word 'virus' and he used the word 'syphilis' too."

And I got up and kind of spluttered a little bit and I said, "Well, the man is changing his story completely." But that had no effect and Edwards either [639] was sent out or sat down. I guess he was sent out.

Well, then, the next thing that happened was I gave my little talk, my summary.

Q. About how long did that take?

A. Well, I think it took about nine minutes.

Q. And what happened after you completed that?

A. Well, there were some interruptions, but right after that happened—I am just trying to think if there was any discussion at all. I don't believe there was any discussion, at least I can't remember

(Testimony of Miles H. Robinson.)

any discussion at all taken by the other members. I don't remember any.

In any case, the next thing that happened was Tompkins said, "I will now excuse Dr. Robinson and declare this meeting a jury to vote."

Q. And what happened then?

A. And everybody looked at me and it was perfectly clear to me that was an order to get out.

Q. What did you do then? A. I got out.

Q. And where did you go?

A. I walked out in the hall and as I went, Tompkins or somebody said, "We will call you back after the voting."

Q. Did you observe anything while you were sitting in the hall?

A. Yes, that is when I saw Fullerton and Tom Brooks were [640] chatting 'way down the hall a ways while I waited out there.

Q. Did you observe anything else?

A. Yes, after I had been there about forty minutes, Dr. Elmer Hill came stomping out of the meeting and he went by me with his face as red as a beet and said, "They voted twice and I am getting out."

Mr. Tuttle: If the Court please, we object to that as being hearsay.

The Court: Yes, unless you consider it a part of the *res gestae* evidence.

Mr. Sembower: Yes, I think it is part of the *res gestae*, and there is a possibility also, since it is a society and he was a member of the society, it would



(Testimony of Miles H. Robinson.)

come in under that. I prefer to present it under the *res gestae*.

The Court: I was just joking about that, but I think he was a member of the society, coming immediately out of the meeting, might be something comparable to it. I will let him testify.

A. Well, the only thing was, he said, "They voted twice, and I am getting out."

So I sat there for another ten or fifteen minutes and then Dr. Carlson came out.

Q. (By Mr. Sembower): How long would you say, Dr. Robinson, that you sat out there in the hall all told? [641]

A. Well, I was out there between forty minutes and an hour.

Q. All right, and then what happened?

A. Dr. Carlson came out and I don't know whether it was on this first visit or the second time when he came out to tell me to come back in, but one of those two times I thought the man was going—well, he was practically crying when he came out and he said——

Q. Well, did he appear to be emotionally disturbed? A. Yes. And the first time——

Q. How was he emotionally disturbed?

A. Well, his eyes were red and his face was jerking around and he could hardly talk.

Q. And then what happened?

A. And he said, "I have been told to come out here and tell you that they are getting ready to vote."



(Testimony of Miles H. Robinson.)

Q. And then what happened?

A. Well, he went back in and I waited another fifteen minutes or so and he came out again and he said, "You are to come in now."

Q. And did you then go in? A. I went in.

Q. What happened then when you went in?

A. Well, there was a dead silence and I sat down and then Dr.—it seems to me it was Dr. Tompkins, I think he was in charge of this show—yes, I know it was—and he [642] announced in a very serious tone of voice, "We voted and you, Dr. Robinson, have been expelled from the society."

Q. What happened after that, if you recall?

A. Well, I just thought this minute of something I hadn't thought of since the thing happened. I asked him, I said, "Did you have a secret ballot?" and he said "Yes."

And that is all that happened, the meeting broke up, and we all went home.

Q. Was the result of the ballot announced?

A. No.

Q. That is, while you were in the meeting did you hear the result of the ballot announced?

A. Oh, no, I don't know what the vote was.

Q. Dr. Robinson, the minutes show the persons who were in attendance at that meeting. Were there any members who were not present whose presence might have had a significant bearing on the proceedings?

Mr. Kimball: I think that is speculative, your Honor.

(Testimony of Miles H. Robinson.)

The Court: I think so. I will sustain the objection.

Q. (By Mr. Sembower): I will rephrase it this way: Were there any members absent, Dr. Robinson, that if you had known that an expulsion proceeding was afoot, you would have sought to have present? A. Yes.

Mr. Kimball: Objection. [643]

The Court: Well, I will overrule that. He may answer.

Mr. Sembower: You may answer.

A. Yes, there were.

Q. Who were they?

A. Well, Dr. Rooks, if I had known that they were going to take a vote on me, I would certainly have had Dr. Rooks there.

Q. Were there any other doctors that were specifically in this category?

A. Well, there was another doctor that I thought would be fair. That was Dr. May Miller.

Q. Anyone else?

A. There were several others, I am trying to think of their names. If I could look at the minutes of the meeting, I could probably tell you just what others that I would have had there. I certainly would have made a real effort to have a large attendance and to have men that were neutral.

Mr. Sembower: I have Plaintiff's Exhibit 129 for identification, purporting to be a copy of a letter from James H. Berge, M.D., dated July 23, 1951,

(Testimony of Miles H. Robinson.)

addressed to Morton W. Tompkins, M.D., and ask that it be admitted.

The Court: It will be admitted.

(Whereupon the said letter was admitted in evidence as Plaintiff's Exhibit No. 129.) [644]

A. May I add another name to your last question?

The Court: Yes, you may.

A. Dr. Smith is a man I certainly would have had at that meeting and also Dr. Mount.

Mr. Sembower: We are checking on this exhibit for a second.

The Court: Yes, all right.

Mr. Sembower: We have a duplicate original. Mark that and cancel this.

The Court: Is that for 129?

Mr. Sembower: Yes, it is the same letter, but we have a better copy.

The Court: Very well, is that agreed, gentlemen, that the original may be used instead of the photostatic copy?

Mr. Rosling: It is not the original, your Honor, but is probably a more legible copy.

The Court: I see. I haven't seen it. [645]

\* \* \*

Q. Dr. Robinson, were you advised, either in the meeting of May 22nd, '51, or at any other time, of any disposition of your complaint against the local grievance committee?

(Testimony of Miles H. Robinson.)

Now, let me rephrase that, any disposition of any complaint purported to have been filed by you against the grievance committee?

A. Well, what happened to that was 'way back on December 13, 1950, I got two letters from Dr. Page, one saying that the Brooks' complaint had been sent to the state or would be sent or might be sent, whatever it was, what he was going to do; the other thing was, "your complaint," meaning mine, "against the grievance committee is without merit."

I thought it died there, I thought it just died right there, but, you see, what happened was the state grievance committee came in and, to my understanding, it resurrected that complaint and made it one against the society. So whatever happened to it from then on, it was never discussed at the expulsion meeting or any other meeting. There was never—you see—I don't know, I don't think it was. I don't think it was ever voted on. [647]

Q. That is, to your knowledge, it was never voted on?      A. No.

Q. Dr. Robinson, what happened, if anything, to your hospital privileges at this time?

A. Well, that question is in two parts in a way. I knew from the laws of the organization involved that I had no hospital privileges the minute that I was expelled. What I did was I got in touch with the hospitals as soon as I felt able to do anything about it, and I asked them to clarify my status, which they did. [648]

(Testimony of Miles H. Robinson.)

Q. (By Mr. Sembower): Dr. Robinson, I hand you Plaintiff's Exhibit No. 121. Do you recall receiving the same? A. Yes.

Q. Was this in response to a letter written by you?

A. No; I had a conversation with Mr. Guthrie of the General Hospital.

Q. About when did that take place?

A. Oh, some days before that letter, two or three, maybe a week.

Q. And where?

A. In the General Hospital.

Q. Was there anyone else present? A. No.

Q. If you recall, what did you say to him and what did he say to you?

A. I went up there to see him and I said, "I assume you know that I have been expelled from the medical society and I wish you would make clear to me just what my status is."

Q. And what did he say to you, if you recall?

A. He said, "Well, as far as I can see, our rules determine [650] that if you are not a member of the society or not eligible, you cannot bring your patients here." And I said, "Well, I would appreciate it if you would define it and write me a note to that effect, because I don't want to get in any trouble doing something I am not supposed to do." So he said, "I will be glad to write you a letter," and that is the letter he wrote. [651]



(Testimony of Miles H. Robinson.)

Q. Dr. Robinson, do you recognize this paper, which purports to be bylaws of the Walla Walla General Hospital?      A. Yes.

Q. Did you obtain that?

A. Yes; Mr. Guthrie gave that to me.

Q. And when and where did you obtain it from Mr. Guthrie, if you recall?

A. Well, I think it was at the time when I talked to him before he wrote the letter.

The Court: Mr. Guthrie, I don't know whether the record shows, is manager or was manager of the hospital at [653] that time?

A. Yes; your Honor.

The Court: Have you any objection?

Mr. Friese: I looked at it, your Honor, yes; but I didn't have a chance to talk to Mr. Hubbs about it.

Mr. Sembower: I would be very happy to withhold it if counsel would like to examine it.

The Court: Yes; I can reserve ruling until tomorrow morning. And I presume you wish to call my attention to the provision?

Mr. Sembower: Yes; we wish to place that before the Court.

The Court: Before attending patients, the doctor must be a member of the local medical society?

Mr. Sembower: Yes. [654]

\* \* \*

Q. Dr. Robinson, were you at this time ineligible for membership to the Walla Walla Valley Medical Society?

(Testimony of Miles H. Robinson.)

A. Well, as soon as I was expelled, I was ineligible.

The Court: You would be ineligible, isn't that the situation?

Mr. Sembower: Yes.

Q. What was the length of your expulsion, Dr. Robinson?

A. Well, I was expelled for one year, and the constitution and bylaws provide that once expelled, you cannot be taken back in less than a year.

Q. And the recommendation, for how long was the recommendation for expulsion by the state grievance committee?

A. Six months, and that was not expulsion, that was suspension. And the distinction is that when—this is all laid out in the rules—if you are suspended, you automatically get back in at the end of the suspension without any application or vote. [655]

The Court: It is rather unusual, though, to expel anybody for a definite time, isn't it? You say that they expelled you for a year, was that the effect of it?

A. Well, your Honor, I believe that the vote—

Mr. McNichols: I think Mr. Sembower can read the minutes.

The Court: Yes.

Mr. Sembower: I find in the minutes, your Honor, of the meeting of the Board of Trustees of the Walla Walla Valley Medical Society, held at the Marcus Whitman, Tuesday, May 16th:

“Dr. Page moved, seconded by Dr. Davis, that

(Testimony of Miles H. Robinson.)

the original motion be amended to read 'That Dr. Robinson be expelled from the society.' "

The Court: Well, I should assume the expulsion would be comparable to his disbarment. It is a final action unless there is reinstatement, and the reinstatement couldn't take place under the regulations for a year, I understand.

Mr. Sembower: That is correct. [656]

\* \* \*

The Court: Oh, let's see, I reserved ruling on Plaintiff's Exhibit 306.

Mr. Sembower: 306.

Mr. Freise: Your Honor, we won't have any objection to it. It appears to be authentic, but we can't find the original records up there at the Walla Walla General Hospital and we have another copy which says adopted in 1954, but we can't find any other copies like this.

The Court: It is my understanding that the purpose [658] for which this is offered is to show that in order to attend patients in the hospital, it is necessary that the physician be a member of the local medical society, and I don't think there is much question about that provision. [659]

\* \* \*

The Exhibit 485, addressed to "Dear Mr. Holloway," starts out:

"The enclosed material will bring your files up to date regarding my controversy with certain of my colleagues here in Walla Walla. Since my oppo-

(Testimony of Miles H. Robinson.)

nents influenced the medical society to expel me on May 22, 1951, for a period of one year, I am now compelled to include the medical society in the list of those opponents.”

Q. Dr. Robinson, do you recall what enclosures accompanied this letter to Mr. Holloway?

A. Yes, I sent him copies of every paper that I had had up until that time, which included the several letters I [663] had written the society and the two complaints that had been made against me. I sent him everything that I had.

Mr. Sembower: I have Plaintiff's Exhibit 128 for identification, purporting to be a carbon copy of a letter on American Medical Association stationery, Bureau of Legal Medicine and Legislation, dated July 2, 1951, signed J. W. Holloway, Jr., to Dr. Edward R. Cunniffe, Chairman, Judicial Council, and ask that it be admitted.

The Court: It will be admitted.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 128.)

Mr. Sembower: Reading from Exhibit 128:

“Dear Doctor Cunniffe:

“Under date of June 9th, I received a letter from Dr. Miles H. Robinson, The Drumheller Building, Walla Walla, Washington, which arrived during my absence from Chicago, relative to a controversy that has arisen between him and the Walla Walla Valley Medical Society.

(Testimony of Miles H. Robinson.)

“In the last paragraph of his letter Dr. Robinson makes the following request of me:

“ ‘Accordingly, I would be much obliged if you would turn this letter over, together [664] with the complete file of this controversy which you have now received from me, to the Judicial Council of the American Medical Association. I will ask them to consider all this material as my appeal to them from the actions against me of my county and state medical associations.’

“In accordance with the request of Dr. Robinson, I am sending to you his letter of June 9th, and copies of previous correspondence that has passed between him and he relative to this controversy.

“I am sending a copy of this letter to Dr. Robinson so that he may know that I have complied with his request.”

Q. Dr. Robinson, did you receive a copy of this letter?      A. Yes, I just received that copy.

Q. This same copy here?      A. Yes.

Q. Which is Plaintiff's Exhibit 128. [665]

\* \* \*

Mr. Sembower: \* \* \* I have Plaintiff's Exhibit 114 for identification, which is in Category No. 2.

The Court: Yes, all right.

Mr. Sembower: It purports to be an original letter from Wallace A. Pratt, M.D., to Dr. Lewis



(Testimony of Miles H. Robinson.)

N. Robinson, dated May 24, 1951, and ask that it be admitted.

Mr. Tuttle: No objection, your Honor.

The Court: It will be admitted.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 114.) [666]

Mr. Sembower: Reading from Plaintiff's Exhibit 114, addressed to Dr. Lewis N. Robinson, c/o Swarthmore College, Swarthmore, Pennsylvania:

"Dear Doctor Robinson:

"Some uneasy circumstances have prevailed here during the last year in connection with Miles and I do not know whether or not he has been confidant with you in regard to things. Further, I do not know even that Ruth Ann, his wife, is aware of the controversies which have beset him.

"At the beginning of the trouble which, to my mind, was insignificant, I tried to dissuade Miles from pursuing his course but to no avail. Miles began writing voluminous letters to all the profession setting forth his views. These letters were followed by others. Investigations were made. Numerous meetings called and finally the State Grievance Committee was called in. Some 6 or 8 doctors came to Walla Walla to investigate the matter on April 22nd last. Miles agreed to be there but finally refused on the grounds he was too busy with his practice and that he had no confidence in [667] the state committee which I believe is composed of impartial and reputable men.

(Testimony of Miles H. Robinson.)

“This state committee heard all the evidence available and after due consideration found Miles guilty and recommended he be suspended for six months from the local medical society. In view of the findings the local medical society called a special meeting and confirmed the recommendation.

“Of course this outcome is lamentable and we, his friends, feel we are powerless to influence Miles who, I understand, is bent on pursuing the matter in the courts, which I fully believe would be futile.

“In view of the situation as it stands Mrs. Pratt and other doctors feel that Miles is suffering from some persecution complex, at least of that nature and that it is expedient that he be persuaded to drop the feud and devote his talents, which he undoubtedly has, to his work.

“Miles has very considerable ability and a most respected wife and family and perhaps it would clean up things if you could find your way clear to come out in the near future. [668]

“Do understand I feel for the boy tremendously but believe his course to be wrong and that I hope your fatherly advice will assist in resolving the difficulties.

“Most sincerely,

“WALLACE A. PRATT, M.D.”

Q. Dr. Robinson, when did you first become aware that this letter had been written to your father? Let me first ask you, who is Dr. Lewis N. Robinson? A. He was my father.

(Testimony of Miles H. Robinson.)

Q. Is he now living? A. No.

Q. When did he die?

A. In November of 1952.

Q. When did you first learn that this letter had been sent to your father?

A. A year or two after he died, when we went through his papers.

Q. Was this letter among those papers?

A. Yes.

Mr. Sembower: I have Plaintiff's Exhibit 120 for identification——

The Court: That is No. 3.

Mr. Sembower: Yes—purporting to be a telegram signed by J. Mark Robinson and addressed to Dr. Miles H. [669] Robinson.

Q. Dr. Robinson, I show you Plaintiff's Exhibit No. 120 and ask you if you have seen it before? A. Yes.

Q. What is the exhibit?

A. Well, that is a telegram that I received one week after my expulsion from the medical society from my brother, Mark Robinson.

Q. This was delivered to your home or office, which?

A. One or the other. I imagine it says there where.

Q. And this is the original copy of the telegram that you received?

A. That is the original telegram.

Mr. Sembower: I ask that it be admitted.

Mr. Tuttle: No objection, your Honor.

(Testimony of Miles H. Robinson.)

The Court: It will be admitted.

(Whereupon, the said telegram was admitted in evidence as Plaintiff's Exhibit No. 120.)

Mr. Sembower: Reading from Plaintiff's Exhibit 120:

"Dr. Miles H. Robinson:

"Think you should fly east to Tunkhannock as soon as possible. Father wants to see you.

"/s/ J. MARK ROBINSON." [670]

Q. Dr. Robinson, after you received this telegram, what was the first thing you did?

A. I immediately called my brother Mark on the telephone.

Q. What did you say to your brother Mark?

A. Well, I asked him if my father was sick.

Q. Did you learn from your brother as to the condition of your father? A. Yes.

Mr. Tuttle: If the Court please, we will object to that as being hearsay.

The Court: I think it is hearsay, yes. I will sustain the objection.

Q. (By Mr. Sembower): Dr. Robinson, did your brother shortly afterwards—well, let me ask you, what happened next?

A. Well, I told my brother on the phone that I had been expelled from the medical society a week before and, as I recall, I said to him, "I suppose this is what father has learned about this from somebody out here."

(Testimony of Miles H. Robinson.)

You see, I had not told him anything about this trouble because he was not very well and I knew it would distress him a great deal.

Q. And then what happened after that with reference to this particular matter, Dr. Robinson, if you recall?

A. Well, then I told my brother that I couldn't—— [671]

Mr. Rosling: If your Honor please, these one-sided conversations can only be self-serving statements on the part of a hearsay conversation.

The Court: Yes, they are hearsay and, if objection is made, I will sustain the objection.

Mr. Sembower: Yes.

Q. Did you have a visit from any member of your family shortly thereafter? A. Oh, yes.

Q. And who was that?

A. My brother Walter.

Q. Where did your brother Walter reside?

A. In Vancouver, Washington.

Q. What was his profession, Dr. Robinson?

A. He is a lawyer down there.

Q. What did your brother do?

A. He came up to Walla Walla to see me.

Q. And on that visit, did he come directly to your residence, or where did he go when he first came?

A. He went to see Dr. Pratt before he saw me.

Q. And then after that what did he do?

A. Well, he came out and we had a visit and talked about this trouble.



(Testimony of Miles H. Robinson.)

Mr. Sembower: I have Plaintiff's Exhibit 287 for identification, purporting to be a photostatic copy of a [672] letter addressed to Dr. Wallace A. Pratt. No signature appears on this letter, that is, on the photostatic copy apparently it doesn't show up.

Q. Dr. Robinson, I ask if you have seen this Plaintiff's Exhibit 287 before?

The Court: It isn't necessary to identify it, the identity and authenticity are not questioned. It is a question of whether it is relevant or not.

Is there an objection?

Mr. Tuttle: No objection, your Honor.

The Court: It will be admitted, then, 287. [673]

\* \* \*

Q. Dr. Robinson, if you know, who wrote this letter to Dr. Pratt? A. My brother. [674]

Q. I show you——

Mr. Tuttle: Which brother, please?

A. Walter Robinson.

The Court: The lawyer in Vancouver?

A. Yes, your Honor.

Q. (By Mr. Sembower): I show you Plaintiff's Exhibit 287 and ask you when you last saw it?

A. Well, the last few months.

Q. Where did you obtain that letter?

A. My brother gave this to me.

Q. Did you explain to your brother the circumstances of your expulsion? A. Yes, I did.

Q. And after you explained to him the circumstances of your expulsion, what did he do?

(Testimony of Miles H. Robinson.)

A. Well, he gave me the complete file of his correspondence with Dr. Pratt.

Mr. Tuttle: That was just recently, you said?

The Court: When was that?

Q. (By Mr. Sembower): When was it?

The Court: Explain the circumstances.

Q. (By Mr. Sembower): When did you have your conversation with your brother Walter?

A. I think it was last fall, or perhaps earlier than that. It was no more recent than that. [675]

Q. And where did it take place?

A. In Swarthmore, Pennsylvania.

Q. And who was present besides yourself and Walter, if anyone?

A. Well, he was back on a visit and just he and I talked about it. [676]

\* \* \*

I have Plaintiff's Exhibit 288 for identification, purporting to be a photostatic copy of a long-hand letter written by Wallace A. Pratt to Walter H. Robinson, dated July 26, '51, and ask that it be admitted.

Mr. Tuttle: No objection, your Honor.

The Court: No. 288 will be admitted, then.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 288.)

Mr. Sembower: Reading from the exhibit:

"Dear Walter:

"Thank you for letting me know present status of efforts to solve the problem. I readily see how

(Testimony of Miles H. Robinson.)

difficult it is for you to get anywhere at such distances. The J. family represents the only avenue and they don't have the facts."

It is difficult to read this. It is——

The Court: Longhand?

Mr. Sembower: Longhand, yes. I will ask Dr. Robinson if he can read this writing. [677]

Q. Dr. Robinson, are you familiar with that handwriting? A. Yes, I am.

Q. Can you read the writing?

A. Yes, I can.

Mr. Sembower: Would it be permissible for him to read it?

The Court: Yes, all right, if there is no objection.

A. (Reading):

"Dear Walter:

"Thank you for letting me know present status of the efforts to solve the problem. I readily see how difficult it is for you to get anywhere at such distances. The J.——"

that is the Johlin,

"——family represent the only avenue and they don't have the facts, it appears.

"Miles returned to his office on the 16th. I have not seen him even at a distance. There is positively no action of account transpiring in his office. The last time I communicated with him was many weeks ago when he called me on a Sunday morning about

(Testimony of Miles H. Robinson.)

7:30 a.m., asking me if I had telephoned [678] his father. I answered no, I had not. He said someone did and he would find out. Perhaps I should have told him I wrote his father. At that hour I was asleep and didn't want any argument. No doubt he thinks I am a double-cross liar and will give me a wide berth from here out.

"Should I ever make a contact with him, I will let you know. It is the general opinion amongst the profession here that Miles is dangerous and it is doubtful if he can work his way back to acceptance generally. Of course, it is all pitiable, most unfortunate. I hope I never see another mental illness speared with persecution complex like Miles.

"Very sincerely,

"WALLACE A. PRATT."

Q. Dr. Robinson, do you know to whom the letter refers in the "J. family"?

A. Yes, that is my wife's family, the Johlin family.

Q. How do you spell that? A. J-o-h-l-i-n.

Q. Reference is made here to your being away from the office. Do you know to what that [679] refers. A. Yes.

Q. What was that?

A. Right after I was expelled, I was really exhausted and I went off for a rest for a week or two.

Q. Was there anyone in the office at that time?

A. I think that that was the only time that there was never anyone in the office.

(Testimony of Miles H. Robinson.)

Q. And why was that?

A. Well, my secretary took a vacation at the same time.

Q. And had her vacation been scheduled prior to the events?

A. Yes, it had. She had planned to go some time around July.

Mr. Sembower: I have Plaintiff's Exhibit 290 for identification, purporting to be a letter from Wallace A. Pratt, M.D., to Walter H. Robinson, Attorney, dated 11-29-51, and ask that it be admitted.

Mr. Tuttle: No objection, your Honor.

The Court: It will be admitted.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 290.)

Mr. Sembower: May I ask the witness to read this, also, your Honor?

The Court: All right.

Mr. Sembower: I think he does much better with the [680] handwriting than I do.

A. I wonder if I could mention that our copies are a good bit better than this, the ones that we have in our file, but I can read this all right.

Mr. Rosling: I suggest the most legible copy be substituted. The one I have is a very poor one; I can't offer this one.

Mr. Sembower: Well, Dr. Robinson, if you can read that. If you have difficulty, do not make any attempt to read it, but if you can read it.



(Testimony of Miles H. Robinson.)

The Court: He seemed to read the last one very readily. If he can read it, why can't we make a substitution later, not delay the trial by fumbling around with it now?

Mr. Sembower: That is what I was thinking.

The Court: Yes.

Mr. Sembower: If you have any hesitancy about a word, we will get a better copy.

A. It has the letterhead of Wallace A. Pratt, M.D., 203 Drumheller Building, Walla Walla, Washington, date of November 29, '51, addressed to Walter H. Robinson, Attorney, 1111 Broadway, Vancouver, Washington:

"Dear Walter:

"Greetings from W. W. This is to advise that the Miles' matter continues to boil. I [681] thought it would die down. However, will say that we rarely see Miles in his office and his office activity seems to remain about the same.

"Mrs. Pratt was pleased that Ruth Ann called at the house over a month ago with another lady and all seemed pleasant.

"Today our bureau meeting received notice that the top committee of the AMA meeting in Los Angeles would review the case. Miles had drawn up a lengthy document setting forth his charges. No copy reached here until today. The hearing will be held in Los Angeles Sunday or Monday next. I understand the local society will send some repre-

(Testimony of Miles H. Robinson.)

sentative down at once to refute or clarify the issue.

“Just thought you would like to know what is transpiring. I will let you know should I learn more details of the outcome. Hope you are keeping busy and well and that your father is holding up well, also.

“With kind regards,

“Sincerely yours,

“WALLACE A. PRATT.” [682]

Q. Dr. Robinson, do you know to what hearing Dr. Pratt refers in this letter? A. Yes.

Q. What is the hearing? What was the hearing, I should say?

A. It was the first hearing of the AMA on my appeal to the AMA held in Los Angeles on December the 2nd, 1951. [683]

\* \* \*

I have Plaintiff's Exhibit 291 for identification, dated April 23, 1951, addressed to Dr. Miles H. Robinson and signed, “Most Sincerely, Your Brother,” and I ask that it be admitted in evidence.

Mr. Tuttle: No objection to that.

The Court: It is admitted.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 291.)

Q. (By Mr. Sembower): Dr. Robinson, the exhibit does not show a signature. I show you Plaintiff's Exhibit 291 and ask you if you recall receiv-

(Testimony of Miles H. Robinson.)

ing this letter?           A. Yes.

Q. From whom did you receive it?

A. From my brother Walter. It has his handwriting on the postscript.

Mr. Sembower: Reading from the exhibit:

“Dear Miles:

“It is not as clear to me, as your letter of April 19, 1952, indicates it is to you, that you could not possibly use as the foundation for a lawsuit the name of the Walla [684] Walla doctor with whom I talked. So reluctant as I am not to comply with your insistent request, since I feel you are somewhat attracted by controversy and might bring some suit for slander against the doctor, I feel obliged to continue to withhold his name. This is the more clear to me for the reason that he spoke to me only in response to my request for information from a family point of view. Moreover, it is possible that I misunderstood his views or gave you an incorrect impression of some of the subjects of our conversation. I do not see how any views which he might have expressed could possibly hurt you or would be actionable.

“But since your future actions may not yet have been determined by you, and in any event are unknown to me, I feel I must protect the source of the information which was requested by me on a confidential basis. It is my firm intention to stay away from this situation, and I do not see how any harm could have been caused by this one conversation.

(Testimony of Miles H. Robinson.)

“I wish your welfare, which is one of the reasons why I have resolved to have no [685] further activity in Walla Walla on this subject, since my one participation appears to you to have been so questionable. Believe me, I would like to comply with your request, but it does not seem that according to my best lights it would be acting on the square for me so to do.

“So at this time,

“Most sincerely,

“YOUR BROTHER.”

And it shows here in handwriting, “cc to Doctor in Walla Walla and cc to LNR.”

Q. Do you know to whom the initials LNR refer?      A. Yes, my father. [686]

\* \* \*

I have Plaintiff's Exhibit 293 for identification, purporting to be photostatic copy of a letter from Walter H. Robinson to Dr. Wallace A. Pratt, dated June 30, 1952, and ask that it be admitted.

Mr. Tuttle: No objection, your Honor. [687]

The Court: It is admitted.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 293.)

Mr. Sembower: Reading from the exhibit:

“Dear Dr. Pratt:

“My brother Miles has sent to me in a letter bearing date June 25, 1952, a copy of the complaint which he has filed. This is the first I knew that he



(Testimony of Miles H. Robinson.)  
actually was bringing suit, though the possibility that he would do so was recognized. Our office will have no part in this suit.

“He has again asked that I disclose the name of the doctor with whom I talked in Walla Walla. Though I had made this quite clear in previous letters, I am writing him again to say that I was the one who sought out this doctor, rather than vice versa, and that I went to him appealing for information and for his opinion to assist me and others of his relatives to understand the nature of the difficulties and in what way, if any, we could assist my brother. I have again made clear to him that any opinions [688] received by me from this doctor were in confidence; that the doctor was not very definite in any specific opinions; that I may have misunderstood any views which the doctor expressed, and that I feel sure my brother misunderstood my having conversation with him. I have again”——

Mr. Rosling: “I feel sure my brother misunderstood my ensuing conversation.”

Mr. Sembower: (Continuing):

“——my ensuing conversation with him. I have again refused to disclose the name of the doctor and will continue to refuse to do so, not with a view to protect the doctor, but because I feel as a matter of conscience it would be wrong to disclose the name of my informant under the circumstances of this inquiry made by me.

“Whatever may be the merits of my brother’s lawsuit, I definitely feel it is wrong to tie in with



(Testimony of Miles H. Robinson.)

that lawsuit unsolicited inquiry made by me of a physician in Walla Walla.

“Trusting you will understand my position on this is quite definite.

“Yours truly,

“WALTER H. ROBINSON.”

Q. Dr. Robinson, do you know——

Mr. Rosling: Is there not a postscript at the bottom?

Mr. Sembower: May I ask? If it isn't, I wish to mask it.

Q. Dr. Robinson, referring to the bottom of the exhibit, do you recognize the handwriting there?

A. Yes, that is my brother's handwriting.

Q. Can you read it? I wasn't able to read it.

A. Yes. It begins with an asterisk and it says: “He has disclaimed any intention to do this, but I am uncertain what his future intentions will be.” And the asterisk is found in the body of the letter after the words “tie in,” I believe.

Q. Dr. Robinson, do you know of the complaint which is referred to in the letter?

A. You mean the lawsuit?

Q. It states, “A copy of the complaint which he has filed.” Do you know to what that refers?

A. Yes.

Q. What was that?

A. Well, we filed a complaint on, I think it was, the 26th of June, 1952, a year after I was expelled.

Q. And before what court was that filed?

(Testimony of Miles H. Robinson.)

A. The Superior Court here in the County of Walla Walla. [690]

Q. Dr. Robinson, did you have a conversation with the defendant Dr. Pratt following the expulsion meeting?      A. Yes, I did.

Q. Where did that conversation take place?

A. My recollection is it was on the way home from the expulsion meeting or the next day. It was immediately after I was expelled.

Q. Was there anyone present at that conversation besides you and Dr. Pratt?

A. No, we were on our—it was either in the yard of his office or going out to the car from the meeting.

Q. If you recall, what did you say to him and what did he say to you?

A. Well, he looked at me and he said something to the effect——

Q. Tell it as nearly as possible in his own words, if you recall what they were.

A. I don't really recall his introductory remark, but I know what I said to him right promptly. I said, "Well, I have just begun to fight."

Q. What did he say that might have prompted that, did prompt such a statement by you?

A. He said, "What now?" or something of that kind, "What are you going to do now?"

Q. And after you had made the statement to him, did he say [691] anything further to you?

A. The only thing I recall he mumbled something to the effect that, "Well, I'm sorry to see you

(Testimony of Miles H. Robinson.)

do that," or, "It is useless," something to that effect.

Q. And did you have any further conversation with him then?           A. No.

Q. Dr. Robinson, did your brother ever reveal——

A. May I correct that? I called him, as it describes in the letters, and I think that is about the only other conversation I had with him. I called him that Sunday morning early when I had heard from my family back East that someone had contacted my father.

Q. That would be the Sunday after the expulsion meeting?

A. Well, I don't know exactly, but it would be fixed by his letter, which I have no reason to dispute, that was just shown.

Q. That is, when you received the telegram, which is Plaintiff's Exhibit No. 120, did you then make a phone call?

A. Well, I called my brother and found out that somebody out here had told the family back East about it, and I immediately assumed it was Dr. Pratt because he was the only one out here that had met my family.

Q. On what occasion had he met your family?

A. Well, my father was out here, I think, the previous summer before all this trouble started, the summer of [692] 1950.

Q. And under what circumstances did he meet Dr. Pratt?

(Testimony of Miles H. Robinson.)

A. Well, we invited Dr. Pratt and his family out to our home.

Q. Were there any others invited on that occasion?

A. I think Mrs. Pratt was there and all of my immediate family.

Q. And was that in the evening or at noon or what time was it, if you recall?

A. Well, I think it was the late afternoon they drove out.

Q. Was that the first time that Dr. Pratt had ever met your father?      A. Yes. First and last.

Q. Was it purely a social engagement?

A. Purely social visit.

Q. How long did it last, about?

A. Oh, an hour or two.

Q. To your knowledge, did Dr. Pratt and your father ever exchange correspondence other than it appears in the exhibits here?

A. No, I'm sure they did not.

Q. Well, then, Dr. Robinson, after you had talked with your brother, you then did telephone Dr. Pratt?

A. Yes. Yes, it might have been five days or so later that I was mulling over the matter, and I called him one [693] Sunday morning and asked him if he had telephoned my father.

Q. And what did he say, if you recall?

A. And, just as he said in the letter, he said, "No, I have not." And I asked of him, "Well, do you know who did?" And when I said that, he hesi-

(Testimony of Miles H. Robinson.)

tated and then he said, "No, I don't," but he said it in a very unconvincing manner.

Q. Did you ask him if he had written your father?

A. No, I didn't think to ask him that, because——

Q. Well—— A. Excuse me.

Q. Well, did you have any reason for not asking him if he wrote your father?

A. Well, yes, because my brother Mark had said that doctors in Walla Walla had telephoned my father, so I was looking for someone who had telephoned, rather than written.

Q. Dr. Robinson, prior to your discovering, as you have testified, this letter from Dr. Pratt among the last papers of your father, did your brother Walter ever tell you who he had contact with in Walla Walla?

A. Well, he never told me until I found this letter and——

Q. And then did you confront him with the fact?

A. Yes, I knew from the letter who it was and then I told [694] my brother and he admitted that he had talked to Pratt. [695]

\* \* \*

Mr. Sembower: Yes, this is the deposition of Dr. Carlson.

The Court: Well, Dr. Carlson is a defendant in this case, is he not?



(Testimony of Miles H. Robinson.)

Mr. Rosling: That is true, but Dr. Carlson is not the witness on the stand.

The Court: That is true, but it doesn't make any difference. This is a writing that he has made.

Mr. Sembower: And he signed it.

The Court: Testimony he has given under oath and, to make an extreme example, suppose he said in here, "Yes, we often conspired wrongfully to kick Dr. Robinson out of the medical society," certainly that would be admissible here, if it had been said privately or under oath or any other way. So that in so far as this constitutes any admission against interest, it will be admissible and the objection will be overruled if you can show it does pertain to the matter under inquiry here.

Mr. Sembower: I believe it does, your Honor.

The Court: All right.

Mr. Sembower: I submit it respectfully.

Dr. Robinson was asking the questions, he was acting pro se at that time, and he asked the question of Dr. Carlson:

"Do you know who contacted my father [697] right after I was expelled?"

Dr. Carlson answered: "No."

"Q. Were you told that my father was contacted at any time in connection with my expulsion or the case against me brought by Tom Brooks?"

The answer was: "What do you by any time, up until today or yesterday?"

The questioner said: "Well, yes."

"A. Will you rephrase the question, please?"

(Testimony of Miles H. Robinson.)

The questioner: "Did you know that my father had been contacted by a doctor in Walla Walla?"

And the answer is: "Yes."

"Q. Who told you that he had been contacted?"

"A. A lot of doctors have told me that he had been contacted and two lawyers heard it.

"Q. Well, I mean before the testimony that has been given today in your hearing, what doctors have told you?"

"A. Now rephrase that again. I cannot answer that."

Dr. Robinson said: "Will you read the question?"

The question was read by the reporter and his answer was: "I will have to answer that as hearsay and [698] indirect statements.

"Q. You don't recall just which doctor did tell you? A. No.

"Q. Do you think it was one of the trustees or officers? A. It may have been.

"Q. What did he tell you about my father having been contacted?"

Mr. Rosling: "Who was present on that occasion," interjected, interposed. "Well, it is purely hearsay and it is inadmissible unless it is a doctor who made the contact personally that he is quoting."

"Q. Do you refuse to answer the question directly on the advice of counsel?"

The answer was: "Yes.

"Q. What did you understand was the object of contacting my father?"

Mr. Rosling: "Well, you are asking him what

(Testimony of Miles H. Robinson.)

was operating in the mind of the individual who made the contact and, obviously, this witness can't know that.

“Q. Did you understand that my father was contacted to extricate me from a serious [699] predicament?”

Answer of the witness, Dr. Carlson: “Well, yes, I would say yes.

“Q. Just what predicament was I supposed to be in?

“A. You were expelled by the society.

“Q. And my predicament was that I was now out in the cold, as it were, is that your understanding?

“A. I don't mean quite out in the cold.”

The Court: I assume that the interrogator is Dr. Robinson here, is that correct?

Mr. Sembower: Yes, the interrogator is Dr. Robinson.

The Court: All right.

Mr. Sembower (Continuing): “Q. Well, let me rephrase it, that I was expelled, that was my predicament?

“A. Well, of course, you have to add more than that.

“Q. What would you add to it in order to give a satisfactory answer?”

Mr. Rosling interposed: “Well, that is all based

(Testimony of Miles H. Robinson.)

on hearsay you may have received, Dr. Carlson, from someone else? [700]

“A. Well, now, I am a little vague on this. Well, yes, I would say it is indirect.”

Dr. Robinson, question: “Well, this discussion over my father, was it held in a meeting, formal or informal, of officers, including yourself?”

And the answer: “Yes, I would say that.

“Q. Do you recall what meeting it was held in?

“A. Well, it seems to me it was in a meeting of the board of trustees in the Marcus Whitman Hotel. I don’t recall when.

“Q. In the Marcus Whitman Hotel. Was that before or after my expulsion?”

Mr. Rosling interposed: “If you know, Doctor.”

And the doctor answers: “I don’t know, I would say after.”

And that concludes the matter relating to this subject.

Mr. Rosling: Now, your Honor, I move to have the excerpts of the deposition which counsel has just read stricken from the record, because, as the Court indicated, the only possibility for its admission in evidence is that it might constitute an admission against interest by one of [701] the parties defendant. It is obvious it does not contain any such admission and, therefore, I ask it be stricken.

Mr. Sembower: Your Honor, if I may speak on the motion.

The Court: Yes.

Mr. Sembower: This is a conspiracy action. It is



(Testimony of Miles H. Robinson.)

certainly an admission against interest when we have a statement from one of the conspirators that he has participated in a meeting where it was discussed that this matter would be taken up by one of the doctors——

Mr. Rosling: Would be or had been, and also after the expulsion?

Mr. Sembower: Had been. I don't wish to play on words, had been, he said, taken up. He testified as to whether it was before or after, he says he thought it was after, and part of the prayer that we have here, this is an essential element of our case, the fact that these letters were sent to Dr. Robinson's father and Dr. Robinson's father changed his will. We will have testimony which will bear strongly on that point, we will have other witnesses that will appear in this matter, and the only reason I present it now is because it is in the chronological order, and I respectfully submit that it is very much an admission against interest.

The Court: Well, of course, if you establish a [702] conspiracy here and establish that Dr. Carlson was a member of it, any statement he might make would be binding on all the others, and I will admit it tentatively with the understanding, of course, that if a conspiracy isn't proven or Dr. Carlson isn't proven to have been a member of it, it would have to go out.

Mr. Sembower: Yes, indeed.

The Court: That is the difficulty we face, of course, in these conspiracy actions, which give a



(Testimony of Miles H. Robinson.)

very wide sweep to the testimony if a conspiracy is established.

Mr. Sembower: We also are submitting it, your Honor, to establish that in fact the meeting was held at which——

The Court: The meeting was held.

Mr. Sembower: The meeting was held at which this discussion and plan took place, the plan was adopted. But we will have other testimony on it, so that I am perfectly satisfied with the ruling that it be admitted subject to being linked up.

The Court: Let's just examine that for a moment. Here is an examination of one member that says that a meeting was held some place. He isn't on the stand here, he isn't testifying. It might be an admission so far as he is concerned that he was at such a meeting; it certainly wouldn't be binding on the others that there was a meeting or [703] that they participated.

Mr. Sembower: No, indeed.

The Court: Unless you prove the conspiracy.

Mr. Sembower: That is correct.

The Court: And all of them were in it.

Mr. Sembower: That is correct, that is my understanding.

The Court: All right, go ahead.

The Clerk: Will it be admitted as an exhibit?

The Court: Yes, I think that particular deposition in this Identification 294—are there more than one? There are a lot of depositions there, aren't there?

(Testimony of Miles H. Robinson.)

Mr. Sembower: Yes, all the depositions are included in that one exhibit, apparently, that were taken in the state suit. We were discussing it last night when we got it out. It may be more satisfactory to mark them as individual exhibits.

The Court: It certainly would be or you will have great confusion in the record here.

Mr. Sembower: Or perhaps Exhibits 294, A, B, C, D and E.

The Court: Do you propose to use all of these exhibits, or these depositions, I mean?

Mr. Sembower: We really don't know. We have them keyed in, your Honor, to bring—— [704]

The Court: Well, I think the Clerk should remark them. I don't know what order you wish them in, but they should be separately marked because they should be separately treated here.

Mr. Sembower: Perhaps during the intermission we could work that out and I will present it to your Honor afterward.

The Court: Well, I think the top one there—is that the one you just read from?

Mr. Sembower: Yes, the top one is the one.

The Clerk: That could be 294, the rest A, B, C.

The Court: 294 will be admitted, then.

Mr. Rosling: Well, if your Honor please, I am going to object to the introduction of the entire exhibit in evidence in this case. As a matter of fact, all he is entitled to do on his theory is to read the statement of the admission, and that has been read into the record.

(Testimony of Miles H. Robinson.)

The Court: Well, I think what I will do, then, is to simply admit in evidence that part which has been read into the record. I know nothing about the rest of it, it may not be relevant.

Mr. Rosling: I don't, either.

The Court: And I think certainly it isn't the kind of document where all or nothing must go in. I think each question and answer would probably have to stand on its [705] own footing as to whether it is admissible or not. So I will admit here, with the reservation that I expressed as to the proof of the conspiracy, the portion read into the record.

Mr. Rosling: And that was Page 117.

Mr. Sembower: I believe it was 115.

The Court: I think what should be done there, you should mark with a pencil line where you began and where you left off so we will have some indication here as to what it is.

Mr. Tuttle: Do you have line numbers on that?

Mr. Sembower: There are no line numbers, but it begins, I am putting a line here, it begins seven lines from the top on Page 115, continues on Pages 116 and 117, and continues to the second line on 118. [706]

\* \* \*

Q. (By Mr. Sembower): Dr. Robinson, you testified a moment ago that immediately after your expulsion you took a short respite. About when did you return to your office?

A. We were gone, as I recall, about ten days. The whole family went over on the Coast.

(Testimony of Miles H. Robinson.)

Q. And after you returned, did you return to your office then?

A. I made a number of trips that summer and fall, some of them very short, to Spokane to get legal advice on how to file my appeal with the AMA, but all the rest of the time I was in the office.

Q. And when you were not in the office, was there someone tending the office?

A. Yes, there was.

Q. You had a nurse or secretary?

A. Yes, I had a nurse all the time.

Q. And how was your practice at this time?

A. Well, it just about fell flat.

Q. What time did you usually report to the office in the morning? [707]

A. Oh, I was down there always by 9 o'clock and quite often earlier.

Q. And how long did you usually stay at the office? A. Oh, I stayed until 5 o'clock.

Q. And what did you do with hospital patients at this time?

A. I had to turn them in all cases over to other doctors.

Q. Did you have some patients that required hospitalization? A. Yes, I did.

Q. And what did you do when those patients occurred in the practice?

A. Well, they were turned over to various other doctors. There were also some cases which I discouraged because they involved possibilities of hospital work.



(Testimony of Miles H. Robinson.)

Mr. Sembower: I have Plaintiff's Exhibit 141 for identification, purporting to be a letter from Roger Leidy, signed Roger, dated October 26, 1951, addressed to Dr. M. H. Robinson, and ask that it be admitted.

Mr. Tuttle: No objection, your Honor.

The Court: All right, it will be admitted, then, 141.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit 141.)

Mr. Sembower: Reading from the exhibit:

"Dear Miles: [708]

"You ask that we indicate the reason why renewal of your policy was refused.

"Customarily the requirements of a physician's liability policy is that he be a member of a medical association. As you are no longer a member of the Walla Walla County Medical Association, and we presume likewise the American Medical Association, the coverage has been declined.

"Very truly yours,

"PAXTON-KENT COMPANY,

"/s/ ROGER,

"ROGER LEIDY."

Q. Dr. Robinson, do you know to what that letter refers? A. Yes.

Q. What was the matter?

A. My medical malpractice insurance had expired some time before that and I wrote, or rather I called up or stopped by and talked to Roger Leidy



(Testimony of Miles H. Robinson.)

about getting it renewed and we talked about the expulsion from the society and he said he would look into it and let me know, and he advised by that letter that I could not get mal-practice insurance since one of the requirements was that you had to be a member of the medical society.

Q. Did you attempt to place your mal-practice insurance [709] elsewhere?

A. Yes, I did, I contacted every agent in Walla Walla that handled mal-practice insurance.

Q. Were you able to secure any mal-practice insurance?      A. I was not.

Q. Did you at any subsequent time succeed in securing mal-practice insurance?

A. I have never been able to get it, even in Baltimore.

Q. You have made application in Baltimore?

A. I have.

Q. And what has been your experience there with respect to that?      A. They refuse it.

Mr. Sembower: I have Defendant's Exhibit 489 for identification, purporting to be a copy of a letter, Robinson to Holloway, November 11, 1951, and ask that it be admitted.

The Court: I assume there is no objection to that, defendant's exhibit?

Mr. Tuttle: No.

The Court: It will be admitted, then. [710]

\* \* \*

Q. Dr. Robinson, do you recognize the exhibit?

(Testimony of Miles H. Robinson.)

I add that it is only a copy. Do you recognize the content of that exhibit?

A. Well, I wrote such a letter, but I notice—well, there is one or two typographical errors here.

Q. But you did send such a letter?

A. Yes, I did.

Q. And the letter was signed by you?

A. Yes. [712]

\* \* \*

And I have Plaintiff's Exhibit 145——

The Court: If you wish to offer that, it will be admitted.

Mr. Sembower: Thank you.

(Whereupon, a letter was admitted in evidence as Plaintiff's Exhibit No. 145.) [714]

Mr. Sembower: Reading from the exhibit: This is addressed to Dr. Ross D. Wring, Tacoma, Washington:

“Dear Dr. Wright:

“This is to inform you that Dr. Miles H. Robinson is prosecuting his appeal before the Judicial Council of the American Medical Association from the decision of the Washington State Medical Association expelling him from membership.

“I am instructing Dr. Robinson to prepare a brief sending copies for the members of the Judicial Council and also one copy to the Washington State Medical Association. Will you please send us six copies of your responding brief immediately after receiving the appellant's brief and send an

(Testimony of Miles H. Robinson.)

additional copy to Dr. Robinson. We would like to hear this appeal in Los Angeles during the meeting in order to save time and expense to all parties.

“Trusting you will co-operate with us, I am

“Very sincerely yours,

“/s/ EDWARD R. CUNNIFFE,

“Chairman, Judicial Council,”

and dated November 15, 1951. [715]

The Court: What is that, Dr. Wright?

Mr. Sembower: Yes.

The Court: What was his position with the Washington State Medical Association?

Mr. Sembower: Your Honor, that has always been anomalous. Apparently, he was a friend of Dr. Cunniffe's.

The Court: Oh. At any rate, he was a doctor in Tacoma?

Mr. Sembower: He is a doctor in Tacoma, yes.

The Court: I see, all right. The document doesn't show what his capacity was?

Mr. Sembower: No. [716]

\* \* \*

Q. (By Mr. Sembower): Dr. Robinson, referring to the outline which is mentioned in the Exhibit 490, did you send a copy to the state association, if you recall?

A. If you are referring to the new outline that the AMA requested, yes, I did. I sent a copy to the State Medical Association.

(Testimony of Miles H. Robinson.)

Q. Do you remember about the date when you sent it?

A. Well, I think it was about the 24th of November. The outline was dated the 21st, but there were several days, that is to say, the date was on my original handwritten copy and by the time we got it mimeographed, and so on, it was two or three days later.

Q. Did you receive, Dr. Robinson, any papers, documents, or [719] briefs from the state association relating to this appeal?

A. Well, the letter from the AMA promised me that I—well, excuse me. In answer to your question, no, I never received anything from the state medical association.

Q. I assume that you were referring to Plaintiff's Exhibit No. 145, which asked the parties to exchange papers, is that correct?

A. I started to refer to that, yes.

Mr. Sembower: Referring to Defendants' Exhibit 447, turning to the minutes of what is described as the emergency meeting of the board of trustees of the Walla Walla Valley Medical Society held at the Marcus Whitman Hotel, November 28, 1951, the members present at this meeting were all defendants, Drs. Beaver, Carlson, Page and Pratt. Noting Paragraph 4 of the minutes, we find the entry:

“That a copy of the brief had been received from the Washington State Medical Association by regular mail Thursday morning, November 29, 1951,



(Testimony of Miles H. Robinson.)

copies of which had been prepared for the various members attending the Board meeting."

This paragraph is referred to because of the anomalous reference to the 29th and the date of the meeting [720] which was held on the 28th. We are not being captious in referring to these dates rather laboriously at this point because one of the issues, of course, is the length of notice given prior to the December 2nd meeting in Los Angeles.

Q. Well, now, Dr. Robinson, referring to the meeting which was set in Los Angeles for the hearing of your appeal to the Judicial Council, did you attend that meeting?      A. Yes.

Q. When was the meeting held?

A. Sunday, December 2, 1951.

Q. And where was it held, if you recall?

A. It was held in a very large hotel there which is specified in some of the telegrams that, I think, have been introduced.

Q. About what time of day was it held, if you recall?

A. I don't recall, but the telegrams give the time, whether it was morning or afternoon.

Q. Well, do you remember who was present?

A. Yes, I remember very well.

Q. Who attended the meeting?

A. There were several members of the Judicial Council—Dr. Cunniffe, the Chairman; Dr. Lukins, a member of the Council from Kentucky; Dr. Pearson of Miami, Florida, another member of the Council. Then there was another [721] member of the



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Judicial Council, four or five of them altogether, I recall, I can't think of his name. And Mr. Holloway, the chief legal counsel of the AMA, was there and his assistant, Mr. Hall.

Then from the state medical association, there was Dr. Benson, who was president, and Dr. Wright, referred to earlier here to whom Dr. Cunniffe had written, and then there was from the Walla Walla Society, Tompkins, Dr. Tompkins and Dr. Page. That is all, those are the only people that were there.

Q. Now, would you relate, Dr. Robinson, in your own words what took place at the meeting?

A. The very first thing I remember is that neither the state medical association nor the Walla Walla Society had any copies of their own constitution and bylaws, and I immediately gave to Dr. Cunniffe copies of the bylaws of those organizations. That was right when we started to discuss the matter and very quickly the question of those documents came up and Dr. Cunniffe didn't have them and neither did anybody else. I was the only one that had any of those documents. Well, then, the meeting was handled by Dr. Cunniffe——

Q. That is, you mean he presided over the meeting?

A. Yes. And he started out and the only thing that I remember him emphasizing was the Edwards' complaint. He [722] made a great point of the fact that no hearing had been held on the Edwards' complaint.

Then I had a chance to make my statement——

Q. Was there any statement made prior to Dr.

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Cunniffe's statement about the Edwards' complaint and between that and your statement?

A. I think there was. I couldn't give you the exact order of the meeting, but now as you ask me I believe Dr. Page started off and described how all this difficulty developed.

Q. I should have asked you sooner, was there a court reporter present?

A. No, there was no secretary or reporter of any kind in the room.

Q. No verbatim transcript kept of the meeting?

A. No verbatim transcript and no one made any notes except myself and I didn't make much.

Q. Well, then, continue with what took place to the best of your recollection.

A. Well, Dr. Page started out with this difficulty beginning with the setting up of the grievance committee and then the Edwards' complaint, and at that point Dr. Cunniffe made a great issue of the fact that there had been no hearing of the trustees on the Edwards' complaint about the dollar and a half. And then it seems to [723] me that the next thing that happened was that I gave my little talk. I just don't remember that anything else much went on after that except my talk, my little speech. On the train going down, I had made up a one and one-quarter page little talk and I timed it, I remember, that it would just take me eight minutes to give it, and I read this off to the members of the Judicial Council and pointing out the terrible thing that had happened to me and the endless irregularities that had taken place all the way through.

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Then after that, the thing I remember particularly, Dr. Tompkins got up and he started to say that he had been proceeding in good faith, they had had the best of intentions from the very start.

Then Dr. Cunniffe—oh, yes, Dr. Benson gave a talk, a most amazing talk, I couldn't make head nor tail of it. He seemed to be saying that the state society knew——

Mr. Rosling: Well, if your Honor please, if he couldn't make anything out of it and didn't understand it, then I object to his reconstructing and using his imagination.

The Court: Well, it is understood he will detail only as to the extent he understood it.

Mr. Sembower: Yes. [724]

A. I remember the substance of what he said, but I couldn't understand it then. By that I mean I understood the English of it and the words he used, but I couldn't understand what he was driving at.

Mr. Rosling: Then, I object to his effort to reconstruct it, your Honor.

A. Well, what he said——

The Court: Just state what he said.

Q. (By Mr. Sembower): Just state just as clearly as you can what he apparently said and let us see——

Mr. Rosling: Your Honor, the witness has disqualified himself from answering and I object to the witness now attempting to report what Dr. Benson may have said.

The Court: Do you remember what he said in substance, the words he said, Dr. Robinson?

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A. Yes.

The Court: Just give us those and see if maybe I can understand it.

A. He said that the state medical association had tried to do its best to do what was right all the way through, and he mentioned various items of what the state had done and—well, that is all I can say.

Q. (By Mr. Sembower): Well, then, were there any statements made after Dr. Benson's, if you recall? A. (No response.) [725]

Q. If you don't recall them, don't dredge your memory deeply. Do you remember anything?

A. Yes, I remember Dr. Pearson said, he said, "Well, you are just objecting to procedures, aren't you?" And I said, "No, I am not just objecting to that, I am objecting to the wrongful procedures and expelling me on a false charge," and that is all the conversation I had with him.

Oh, yes, I do remember now, also, Mr. Holloway—I don't know whether I am allowed to say what Mr. Holloway said, but——

The Court: Who is Mr. Holloway?

Mr. Sembower: Mr. Holloway was the general counsel of the American Medical Association.

The Court: Oh, yes, yes, I remember now. Yes, general counsel of the AMA. All right, go ahead.

A. Mr. Holloway was having a discussion with Dr. Wright and they were talking about the group health decision in Seattle——

Mr. Rosling: Now, if your Honor please, it is quite evident that this is not a part of the hearing



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of the Judicial Council meeting, but is a private conversation between Holloway and Wright.

A. Well——

Q. (By Mr. Sembower): Was it a private conversation? [726]

A. It was. It occurred in the meeting, but it was after the main business.

Q. I just wanted to ask about the proceedings themselves.

Now, do you have any more independent recollection of the proceedings themselves?

A. I was just running over in my mind the men that were present to see what any of them may have said.

Q. Do you remember——

A. There was a good deal of discussion by Dr. Cunniffe of the case and there was a good bit more said by Tompkins and Page, but I just can't remember anything else that was said at the time.

Q. Did you hear any objections made at the outset of the hearing with respect to the arrangements for the hearing or the procedures?

A. No.

Q. That had been established?

A. There was no objection of any kind made to the procedures.

Q. Well, do you recall specifically whether there was any objection made to the length of notice for the meeting?

A. I don't recall any objection.

Q. During the course of the meeting, were there



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any objections voiced by the participants in the hearing?

A. I don't recall any objections. It was a fairly informal [727] hearing and Dr. Cunniffe asking the questions.

Q. Was there any objection, if you recall, to the absence of a court stenographer there?

A. Oh, that question was never even mentioned.

Q. Was there any objection made to the form of the way in which the Judicial Council set up the subject matter to be heard?

A. No, there were absolutely no objections of any kind. We went right into the meeting and that is the only thing that happened. [728]

\* \* \*

(Whereupon, the said letter was admitted in evidence as Defendants' Exhibit No. 497.)

Mr. Sembower: And I will read the exhibit. This is a letter from Dr. Robinson to Dr. Edward R. Cunniffe, Chairman of the Judicial Council:

"Dear Dr. Cunniffe:

"In our telephone conversation January 12, 1952, you advised me that the decision of the Judicial Council of the AMA in my case had been made, and that 60 days after the hearing of December 2, 1951, you would send the decision, not to me, but to the organization here.

"Presumably, the organization will then inform me of the decision, but I cannot be sure. Furthermore, my experience with the organization is, as you

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well knew, that it has no scruples whatever about observing open, honest, and accurate procedure.

“It seems to me that I am just as much [730] entitled to direct advice from the Judicial Council stating its decision in my case as is the organization. It is inconceivable to me that in any appeal to a ‘court of last appeal,’ or supreme court, that such court would make known its decision only to the respondents and not to the appellant.

“Just because I have the courage and the strength to fight the corrupt actions of certain doctors here absolutely does not mean that my family and I are not miserable under the disgrace which has been unjustly heaped on me. Every day prolongs that misery.

“I cannot understand why you withhold knowledge of your decision after it is made during this period of 60 days. I only know that this delay prolongs the utterly unjust and cruel punishment continuously inflicted on me and my family for well over a year now.

“I hereby request that you, as Chairman of the Judicial Council of the American Medical Association, forward to me the statement of the Council’s decision at the same time that you forward same to the organization.”

Q. Dr. Robinson, did you have the telephone conversation with [731] Dr. Cunniffe to which you refer in that letter?      A. Yes, I did.

Q. Do you remember about when it took place?

A. January 12, 1952.

Q. And was that telephone conversation the basis

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for your belief that the decision, when rendered, would be sent to the association but would not be sent to you?      A. That is correct

Mr. Rosling: It was the organization, rather than the society, was it not?

Mr. Sembower: What would be the significance of that?

Mr. Rosling: Well, association means the state and organization could mean either or both.

Mr. Sembower: Well, I have been trying to follow, and I appreciate the suggestion, the nomenclature, the society for the local group, association for the state, and I suppose the AMA for the national. I will try to follow that to avoid ambiguity. [732]

\* \* \*

Q. Dr. Robinson, do you recall receiving the telegram which is Exhibit 157?

A. Yes, indeed.

Q. What did you do when you received it?

A. I in a day or two wrote the society and the state medical association and asked them to confirm my membership. [733]

\* \* \*

Your Honor, at this time I ask the Clerk to publish the depositions of Edwin J. Holman and George F. Lull.

The Court: Do you have the originals, Mr. Granger?

The Clerk: Yes. When was that one taken?

Mr. Sembower: That was taken under date of July 14, 1955, and bears——

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The Clerk: I have it.

Mr. Sembower: You do have it? All right. Thank you.

Turning to Page 50 of the deposition——

The Court: What deposition is that?

Mr. Sembower: This is the deposition of Edwin J. Holman and George F. Lull, and this deposition——

The Court: They are not parties, of course?

Mr. Sembower: No, they are not parties.

The Court: Do you require any showing as to whether they are outside the jurisdiction of the Court or more than 100 miles from the place of trial?

Mr. Rosling: No, your Honor.

The Court: You have no objection to the use of the deposition?

Mr. Rosling: I don't object to it. I don't [740] think he should read excerpts, I think the whole thing should go in or none.

Mr. Sembower: Well, your Honor, as a matter of fact, this was taken in connection with subpoenas duces tecum and would review a great deal of material with reference to the documents that are referred to. I propose to read a section which relates to a specific document and nothing else.

The Court: Well, I think that counsel may read excerpts to keep the continuity. Opposing counsel, of course, will have the privilege of putting in other parts if they desire.



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Mr. Sembower: The deponent on the stand at the time was Edwin J. Holman and the examination was done——

The Court: Pardon me, they should be read in such a way as to give opposing counsel an opportunity to object to the questions, too.

Mr. Sembower: Yes.

The Court: Before the answers are read, if they care to make any objections.

Mr. Sembower: I am sure that counsel will not have any objection, other than to the whole thing, possibly.

The Court: I see.

Mr. Sembower: Because it isn't a question and answer setup. [741]

The Court: Oh.

Mr. Sembower: It is only quoting from the document before him at the time.

Mr. Schwartz, who was the examining attorney, asked Mr. Holman——

Mr. Rosling: Page, please?

Mr. Sembower: Page 50:

“Q. You have handed me the minutes of the meeting of the Judicial Council held February 15, 1952?      A. Yes, sir.

“Q. Would you state who was present at that meeting?

“A. The minutes reflect that the Chairman, Dr. Edward R. Cunniffe, was present, as were the members: Doctors Walter F. Donaldson, J. B. Lukins, Homer L. Pearson; George F. Lull, Secretary.